

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

31-5

522

No. 23,772

No. 23,853

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23,772

UNITED STEELWORKERS OF AMERICA, AFL-CIO,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

No. 23,853

FIBREBOARD CORPORATION,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

ON CONSOLIDATED PETITIONS FOR REVIEW AND CROSS-
APPLICATION FOR ENFORCEMENT OF A SUPPLEMENTAL
ORDER OF THE NATIONAL LABOR RELATIONS BOARD

APPENDIX - VOLUME I

United States Court of Appeals
for the District of Columbia Circuit

FILED JUL 20 1970

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF TRIAL EXAMINERS
BRANCH OFFICE
SAN FRANCISCO, CALIFORNIA

FIBREBOARD PAPER PRODUCTS CORPORATION

and

Case No. 20-CA-1682

EAST BAY UNION OF MACHINISTS, LOCAL 1304,
UNITED STEELWORKERS OF AMERICA, AFL-CIO; and
UNITED STEELWORKERS OF AMERICA, AFL-CIO

- 3.21.61 Board's Decision and Order issued by the National Labor Relations Board
- 9.13.62 Board's Supplemental Decision and Order issued by the National Labor Relations Board
- 8.17.67 General Counsel's Backpay specification and notice of hearing, issued
- 8.30.67 ^{1/} Petitioner Fibreboard Corporation letter requesting extension of time for filing answer to backpay specification, dated
- 8.31.67 Regional Director's order extending time to answer, dated
- 9. 7.67 Petitioner Fibreboard's answer to backpay specification, dated
- 9.11.67 Petitioner Fibreboard's motion for pre-trial conference, dated
- 9.25.67 Trial Examiner's order to show cause, dated
- 10. 2.67 Trial Examiner's order granting motion, dated
- 10.13.67 Petitioner Fibreboard's amended answer to backpay specification, dated
- 10.16.67 Hearing opened in pretrial conference
- 10.17.67 Hearing closed in pretrial conference
- 10.23.67 Petitioner Fibreboard's appendix to amended answer to backpay specification, dated
- 10.23.67 Hearing opened on backpay
- 12. 8.67 Trial Examiner's telegram to all parties advising that hearing will reconvene, dated
- 12.15.67 Hearing closed on backpay

1/ Fibreboard Corporation hereinafter called Petitioner Fibreboard.

- 2.16.68 Joint motion among the parties to amend stipulation previously entered into, dated
 - 2.19.68 Joint motion among the parties to amend General Counsel's exhibit No. 1-M, dated
 - 2.19.68 Joint motion among the parties to correct the transcript of hearing, dated
 - 5. 9.68 Trial Examiner's order receiving into evidence Trial Examiner's Exhibit one, dated
 - 5.23.68 Trial Examiner's backpay Decision, issued
 - 8.19.68 Petitioner Fibreboard's exceptions to the Trial Examiner's Backpay Decision, received
 - 8.19.68 United Steelworkers of America, AFL-CIO, (hereinafter called Petitioner Steelworkers) exceptions to the Trial Examiner's Backpay Decision, received
 - 8.19.68 General Counsel's exceptions to the Trial Examiner's Backpay Decision, received
 - 9.17.68 General Counsel's letter correcting portions of his exceptions to the Trial Examiner's Backpay Decision, dated
 - 12.15.69 Supplemental Decision and Order issued by the National Labor Relations Board
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[Caption Omitted in Printing]

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[Caption Omitted in Printing]

Before: HENRY S. SAHM, Trial Examiner

TXD-(SF)-53-68
San Francisco, Calif.

TRIAL EXAMINER'S BACKPAY DECISION 1/

History of Proceedings

The Company and the Union have had a history of collective bargaining dating from 1937. 2/ The last of these contracts expired on July 31, 1959. Between 1954 and 1956 the Respondent Company had under consideration the feasibility of contracting out its maintenance work as a measure of effecting plant economies. The study was renewed in June 1959. As a result of the renewed study, Respondent let out its maintenance work to an independent contractor and terminated 53 of its maintenance employees. The Union then initiated proceedings and the Board found the Company to have committed an unfair labor practice within the meaning of Section 8(a)(5) of the National Labor Relations Act, herein called the Act, 3/ and ordered the Company to reinstitute the maintenance operation performed by the employees represented by the Union and to reinstate the employees to their former or substantially equivalent positions with backpay computed from the date of the Board's - 2 - supplemental decision to the date of the Company's offer of reinstatement to the terminated employees. 4/ On appeal, the Court of Appeals for the District of Columbia granted the Board's petition for enforcement, 322 F.2d 411. The decision was affirmed by the Supreme Court, 379 U.S. 203, 85 S.Ct. 441, on December 14, 1964.

A controversy then arose over the amount of backpay due the terminated employees. The General Counsel claimed \$378,545; the Respondent Company, \$118,136. Thereafter, the Regional Director for the Twentieth Region on August 17, 1967, issued backpay specifications for the purpose of determining the amount of backpay, if any, due to these terminated employees. Respondent thereupon filed an answer which was subsequently amended on October 13, 1967. Hearings were held after prehearing proceedings before Trial Examiner Henry S. Sahn in San Francisco, California, on various dates between October 16 and December 15, 1967. Briefs were filed by the parties on February 19, 1968, and reply briefs ten days later.

- 1/ The transcript of the hearing is hereby corrected in accordance with the parties' joint motion dated February 19, 1968.
- 2/ The Company is referred to interchangeably herein as Respondent and Fibreboard and the Union also as Local 1304.
- 3/ The Board in its original decision (130 NLRB 1558) dismissed the complaint but upon reconsideration it found the Respondent had violated the Act and ordered reinstatement and backpay for the terminated employees (138 NLRB 550).
- 4/ 138 NLRB 550. The Board limited backpay to earnings which might have been received from and after the Board's final order in its supplemental decision and not from the date the Company terminated the employment nor from the date of the original decision.

The Salient Issues

1. Although there is agreement among the parties as to the base period quarterly earnings for the year preceding August 1, 1959, and also for interim earnings, medical expenses and other deductible expenses, there is disagreement as to the wage formula that should be applied in computing the terminated employees' gross backpay during the backpay period which commences on September 14, 1962, and ends on January 18, 1965. The contract under which the parties operated prior to the time the employees were terminated had a wage formula which provided that wage scales shall be established at 12 1/2 cents per hour less than the building trades millwrights' rate. The Employer, Fibreboard, takes the position that since this contract expired on July 31, 1959, when the employees were terminated, the validity of this formula expired with it. Therefore, its argument continues, one must look to or have recourse to other indicia in determining what the appropriate wage rate should be during the backpay period. This wage rate, contends Respondent, should be the hourly wage rates paid its ILWU millwrights who from 1946 to 1959 received the same rate and did comparable work as the terminated machinists.

The Union's position is that the contract did not terminate but continued in effect, automatically renewed each year for a 1-year term from August 1, 1959, until the parties negotiated a new contract in July 1965. Therefore, argues the Union, the above-described formula embodied in the contract is the most appropriate measure of the wage scale available and, accordingly, should be applied.

The General Counsel argues that whether or not the contract terminated is immaterial because the best objective formula to be applied in computing the employees' gross backpay is the formula in the contract which was used since 1951 to establish the employees' wage scale.

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2. Also, in dispute is the number of jobs which were available during the backpay period when the terminated employees were replaced by an independent contractor.

3. Whether the Company is obligated to the discharges for certain specified pension benefits for the period from August 1, 1959 (the date of the employees' termination), to September 14, 1962 (the date the Board's supplemental decision issued), for which period of time no backpay was ordered by the Board.

4. Whether severance payments made at the time the employees were terminated should be deducted from backpay due.

5. What the appropriate compulsory retirement dates are with respect to seven terminated employees.

6. Whether interest on backpay should accrue even though the Board's supplemental decision contained no order that interest be paid.

7. Whether three discharges forfeited their rights to reinstatement and backpay because of alleged picket line violence.

COMPUTATION OF GROSS BACKPAY

The General Counsel and Union's Contentions

Counsel for the General Counsel and the Union contend gross backpay should be computed on the basis of the terminated employees' basic wage rate to the wage rate of the construction millwrights in the Bay Area of Northern California. This "objective" criterion, they state, was originally embodied in the Union and Respondent Company's collective-bargaining agreement effective August 1, 1951, 5/ and had been incorporated in each succeeding agreement through July 31, 1959. Section I of these collective-bargaining agreements established the wage scale formula of the unit employees 6/ "at one dollar per day less than the prevailing Building and Construction Crafts' scale" [construction millwrights] and further provided that the said wage scale "shall be applied automatically August 1 of each year." 7/ The said agreements also established a workday of 8 hours. Accordingly, the \$1 per day amounted to a differential of 12 1/2 cents per hour. 8/

- 4 - The construction crafts' [millwrights] hourly scale for work of the type performed by the unit maintenance machinists employees, the discharges herein, as set forth in applicable contracts during the backpay period of September 14, 1962, to January 18, 1965, was as follows: June 16, 1962--\$4.40; June 16, 1963--\$4.63, and June 16, 1965--\$4.925. 9/ Accordingly, contends the General Counsel and the Union, the basic hourly wage rate of the terminated employees which should be applied in computing their gross backpay is 12 1/2 cents per hour less than the construction crafts' scale or: August 1, 1962--\$4.275; August 1, 1963--\$4.505, and August 1, 1965--\$4.80.

The General Counsel claims that the quarterly gross backpay for each terminated employee should be determined by multiplying each one's average quarterly earnings by a factor obtained by

5/ Union's Exhibit No. 4.

6/ Classifications encompassed within the unit of maintenance employees were: maintenance machinists, firemen, engineers, helpers, and working foreman. See Appendix "A" of Union's Exhibit No. 4.

7/ The terms "building trades millwrights, building and construction crafts," and "construction millwrights" are used interchangeably in the transcript and in this decision.

8/ Also known as the "Pabco formula." See Section 1 of Union's Exhibit No. 4.

9/ The wage rates of the construction crafts, also referred to as building trades millwrights, that were in effect from 1959 to the beginning of the backpay period were: June 16, 1959--\$3.76 an hour; June 16, 1960--\$3.94 1/2, and June 16, 1961--\$4.18.

dividing the applicable backpay period wage rate by the basic wage rate of \$3.525 of the parties' collective-bargaining agreement in effect at the time of the unfair labor practices. Thus, under the General Counsel's formula the factors applicable to various portions of the backpay period, reflecting changes in the wage scale, are as follows:

September 14, 1962, to July 31, 1963-- $\frac{4.275}{3.525}$ or 1.212; 10/ and for the period from August 1, 1963, to July 31, 1965-- $\frac{4.505}{3.525}$ or 1.278; and from August 1, 1965, to July 31, 1967-- $\frac{4.80}{3.525}$ or 1.361. 11/

In refuting the Company's contention that the contract between the parties terminated on July 31, 1959, (page 2, supra), and with it, the validity of this above-described wage formula, the Union argues that the contract did not terminate but continued, automatically renewed each year until a new contract was negotiated in July 1965.

The contract which was in effect on July 31, 1959, the date when the employees were terminated, provides at page 1, a renewal clause which reads as follows:

This Agreement shall continue in full force and effect to and including July 31, 1959, and shall be considered renewed from year to year thereafter between the respective parties unless either party hereto shall give written notice to the other of its desire to change, modify, or cancel the same at least sixty (60) days prior to expiration.

Within fifteen (15) days after notice of reopening is given, the opening party shall submit a complete and full list of all proposed modifications. All other sections shall remain in full force and effect. Negotiations shall commence no later than forty-five (45) days prior to the anniversary date of the Agreement unless otherwise mutually changed.

- 5 -
- 10/ The gross backpay for each employee for the fraction of a quarter from September 14 to September 30, 1962, was computed by the General Counsel by multiplying 0.19, representing the fraction of a quarter involved, by his average quarterly earnings and then multiplying the product thereof by the appropriate factor for that period, namely, 1.212.
- 11/ The gross backpay of each terminated employee for the period January 1 to January 18, 1965 (end of backpay period), was computed by the General Counsel by multiplying 0.20, representing the fraction of the quarter involved, by his average quarterly earnings and then multiplying the product thereof by the appropriate factor for that period, namely, 1.278.

On May 26, 1959, the Union sent Respondent Fibreboard a letter notifying it as follows: 12/

Pursuant to the provisions of The Labor Management Relations Act, 1947, you are hereby notified that the Union desires to modify as of August 1, 1959, the collective-bargaining agreement contract dated July 31, 1958, now in effect between the Company and the Union.

The Union offers to meet with the Company at such early time and suitable place as may be mutually convenient, for the purpose of negotiating a new contract.

On June 15, 1959, the Union sent a letter to the Company specifying various proposals which it desired to discuss. 13/ These proposals included wage scales, seniority, hours of work and overtime, holidays, night differentials, vacations, welfare plan, adjustment of complaints and the payment of 5 cents per hour to provide for supplementary unemployment benefits for employees laid off in a reduction in force.

The Union contends that in interpreting the above notice vis-a-vis the renewal clause of the contract, supra, a distinction must be drawn between a notice to terminate and a notice to modify. This letter, argues Union's counsel, is a notice to modify not terminate and, therefore, no notice to terminate was sent by the Union within the meaning of said contract's above-quoted renewal provision. Accordingly, concludes the Union, the contract was renewed for another year, namely, to July 31, 1960, subject to negotiations on those sections of the contract opened for modification, thus establishing that the wage formula in the contract continued in effect from August 1, 1959, to January 18, 1965, the end of the backpay period or until a new contract was executed by the parties in July 1965.

Respondent's Contentions

- 6 - Respondent states that the General Counsel and the Union's computation of gross backpay on the basis of the wage formula in the contract which terminated on July 31, 1959, results in a wage scale throughout the backpay period higher than the \$4 rate to which the parties agreed when they executed a collective-bargaining agreement in July 1965. The Respondent asks rhetorically if it is reasonable to credit these terminated employees throughout the backpay period with wage rates higher than what the reinstated employees ultimately received when they returned to work pursuant to the Supreme Court's decision. Moreover, argues Respondent, the record clearly shows that the work done by the ILWU millwrights and the terminated machinists was comparable in skill as evidenced by the historical identity of their hourly wage rates from 1946 to 1959, and the fact

12/ Respondent's Exhibit No. 2.

13/ Respondent's Exhibits Nos. 3(a) and (b).

that they were both being paid the same wage rate when the machinists were terminated. Therefore, contends Respondent, the formula which should be applied in computing what the discharges would have received during the backpay period is the hourly wage rate which was paid by Respondent to its ILWU millwrights from September 14, 1962, to January 18, 1965.

Conclusions

Contract Termination

In determining whether the collective-bargaining agreement executed on September 24, 1958, expired on July 31, 1959, as Respondent contends, or automatically renewed itself each year until a new contract was negotiated in July 1965, as the Union claims, it should be borne in mind that not only did the Board in its original Decision and Order state that the contract "expired July 31, 1959," 14/ but also there is no reference to the matter of contract termination in the Board's Supplemental Decision and Order. 15/ Moreover, the Board stated in its original decision that "automatic renewal of the existing contract with the Steelworkers had been forestalled by the Union's letter of May 26, requesting substantial modifications in the existing contract." 16/ The Trial Examiner in his decision also stated "the contract terminated . . . on July 31, not only by its own terms but also by reason of the Steelworkers' May 26 notice." 17/ Furthermore, when the Union's letter of May 26, 1959, notifying the Company of its "desire to modify" the contract is considered in the context of a specific provision in said contract that it "shall continue in full force and effect from year to year unless either party shall give written notice of its desire to change, modify, or cancel the same at least sixty days prior to expiration," 18/ it would appear the Union's contention that the contract was not terminated passes the outermost bounds of reason. It simply will not bear the construction which Union's counsel propounds. Furthermore, the Union's reason for claiming the contract did not expire is without merit because the language of the renewal clause is unambiguous and clear in its meaning. It plainly and explicitly states that if no agreement is reached upon the Union's proposed modifications before the contract expiration date, the collective-bargaining agreement will terminate. Accordingly, in evaluating the foregoing circumstances, it is found that the parties' collective-bargaining agreement terminated at midnight on July 31, 1959.

Backpay Wage Rate

There is agreement among the parties with respect to the average quarterly earnings of each terminated employee during the base period, August 4, 1958 through July 31, 1959, as well as their interim earnings, medical and other expenses incurred in connection.

14/ 130 NLRB 1558 at 1559.

15/ 138 NLRB 550.

16/ See page 5, supra.

17/ 130 NLRB at 1573.

18/ Respondent's Exhibit No. 1 at page 1.

- 7 - with interim employment. It was stipulated that, beginning with 1946 and ending on July 31, 1959, wage rates of millwrights, members of the International Longshoremen's and Warehousemen's Union, hereinafter referred to as ILWU millwrights (who are not to be confused with the ILWU production workers), employed in Respondent's Emeryville plant, received the same wage rates as the terminated maintenance machinists whose backpay is in issue. Subsequent to the machinists' termination, the ILWU millwrights continued to work throughout the backpay period and some of them replaced the terminated machinists in the felt mill and paint shop. It is uncontroverted that the wage rate paid by Fibreboard to its ILWU millwrights during the backpay period was identical with the hourly rate paid maintenance machinists under the Union's contract with Foremost Food and Chemical Company and that this was the highest wage rate paid maintenance machinists in the Bay Area ^{19/} under any contracts that the Union herein had with other companies which employed maintenance machinists doing work and requiring skills comparable to that of the maintenance machinists at Fibreboard. See Respondent's Exhibits Nos. 7 and 9. In July 1959, Respondent's ILWU millwrights received \$3.52 1/2 per hour, the same as the terminated maintenance machinists. In September 1962, the beginning of the backpay period, the ILWU millwrights wage rate was \$3.695 per hour; June 1, 1963--\$3.795 per hour; June 1, 1964--\$3.895 which hourly rate remained in effect until June 1, 1965, when it was increased to \$3.985.

It is also stipulated that when the terminated maintenance machinists were reinstated on March 22, 1965, they received \$3.74 per hour upon their return to work as compared with the \$3.895 which Respondent's ILWU millwrights were receiving at that time. Subsequently, on July 7, 1965, the Respondent and Union negotiated a contract in which they agreed upon a wage rate of \$4 per hour for the reinstated maintenance machinists, effective July 15, retroactive to March 22, 1965. And on June 1, 1965, the Respondent's ILWU millwrights' hourly wage rate was increased to \$3.985.

It will be recalled that the Union and General Counsel contend that the wage rates the terminated maintenance machinists should be credited with during the backpay period should be determined by the "Pabco wage formula" embodied in the contract which expired on July 31, 1959. ^{20/} The Respondent Fibreboard claims, however, the best measure of what the reinstated employees would have received during the backpay period is the rate Respondent paid its ILWU millwrights who did work comparable in skills and whose wage rate for 13 years had been the same as the terminated maintenance machinists.

If the General Counsel and Union's formula were to be adopted, the discharges would receive an hourly wage of \$4.505

^{19/} The "Bay Area" encompasses the following nine counties: San Francisco, San Mateo, Contra Costa, Alameda, Marin, Sonoma, Solano, Napa and Santa Clara. U.S. Census Bureau.

^{20/} The Pabco wage formula provides a wage rate of 12 1/2 cents an hour less than the construction millwrights' wage scale. See page 3, supra.

for the last 6 months of the backpay period as contrasted with both the \$3.74 rate at which they returned to work in March 1965, and the \$4 per hour agreed upon subsequently by the parties under their collective-bargaining agreement effective July 15, 1965. Moreover, the wage rates which would have been payable under the 1959 expired contract, had it remained in effect, would have been excessive as compared with the wage rates paid by other employers in the Northern California Bay Area who had contracts with the Charging Union involving their maintenance machinists. The highest wage rates paid maintenance machinists during the backpay period under any of said contracts were those paid by the Foremost Food and Chemical Company. See Respondent's Exhibit No. 9. It is uncontroverted that during the first portion of the backpay period, beginning in August 1962, Foremost's maintenance machinists were receiving \$3.57 per hour as contrasted with the \$4.275 which would have been payable under the "Pabco" formula in the Fibreboard contract for the period August 1959 to August 1960. 21/ This \$3.57 Foremost figure for August 1962, as compared with the \$4.27 1/2 Pabco rate as of August 1959, reveals that the "Pabco" formula is both unreasonable and unrealistic. Corroborative of this predicate is the Board's finding in its decision that Fibreboard's concededly valid economic reason for subcontracting its maintenance work to an independent contractor in 1959 was due to its maintenance costs being too excessive. 22/

If the Union's theory were to be given credence that the contractual wage formula in the 1959 agreement remained operative thereafter, it would have resulted in an automatic wage increase to \$3.53 1/2 an hour for the unit employees beginning in August 1959, whereas more than 5 years later in January 1965, and in an economy of rising prices, the independent contractor's employees received \$4, and the reinstated discharges upon their reinstatement in March 1965, received \$3.74 which was raised four months later to \$4, and Respondent's ILWU millwrights received a wage rate of only \$3.895. 23/

21/ See pages 3, 4, and footnote 9, page 4.

22/ Fibreboard Paper Products Corporation, 130 NLRB 1558.

23/ The record is not entirely clear as to the exact wage rate the independent contractor who took over the duties of the terminated unit employees was paid by Respondent in January 1965, but it appears to have been approximately \$4 per hour. It should be noted in this regard that the independent contractor paid his employees time-and-a-half for overtime whereas Respondent had paid the terminated employees double time. When the parties executed a contract in July 1965, it provided double time for overtime. The \$4 rate paid the independent contractor is equivalent to what the independent contractor was receiving as of January 1965, which figure, in addition to a basic hourly rate, includes also overtime rates and fringe benefits. It was also stipulated that the employees of the independent contractor for the period from 1959 to 1965 that were doing millwrights' work were paid the rates of millwrights under the contract between the building trades union and the Associated General Contractors in the Bay Area. See pages 843 and 935 of the record.

- Moreover, if the General Counsel and Union's backpay formula were to be adopted, the employees would receive during the last quarter of 1962, a wage rate of \$4.27 1/2 as contrasted with the \$4 eventually agreed upon in July 1965. Continuing this comparison, the contractual or "Pabco" formula would have resulted in wage rates of \$4.50 1/2 per hour for the backpay period from August 1, 1963 to August 1, 1964, and \$4.50 as of January 18, 1965, the end of the backpay period, or 50 cents and 80 cents per hour more than the \$4 wage rate discharged employees subsequently
- 9 - received under the contract which was executed in July 1965 after their reinstatement. 24/ It would not only be specious, but indeed strange, to adopt the Union and General Counsel's formula under which the terminated employees would receive during the 1962-1965 backpay period a wage rate higher than the \$4 hourly rate established in the contract executed by their Union with the Respondent in July 1965. 25/

Furthermore, to adopt the Pabco formula would be contrary to precedent, as the Board has repeatedly held that the fairest measure of computing backpay, in situations such as this, is to adopt a wage scale paid other employees in the same plant who do similar work requiring comparable skills. Loss of earnings of backpay claimants should be measured by the earnings of their replacements or comparable employees. 25/ Probative of the fact that the work of the terminated machinists and ILWU millwrights was similar and required comparable skills is their identical wage scale prior to July 31, 1959, and the testimony of Maffey, Project Engineer at Fibreboard's Emeryville plant, that the discharges who worked in the paint shop and felt mill were replaced by Respondent's ILWU millwrights.

Finally, it should be borne in mind that when it was agreed by the Respondent and Union in July 1965, that the reinstated employees should receive a wage rate of \$4, the ILWU millwrights employed by Respondent were receiving approximately the same wage rate, namely \$3.98 1/2 an hour. Also corroborative of the soundness of this \$4 rate is the cogent fact that it was higher than the cost of living increases which had accrued during the backpay period. Accordingly, it is found that the formula to be applied in computing the terminated maintenance machinists' gross backpay is the wage rate paid by Respondent to its ILWU millwrights from September 14, 1962 to January 18, 1965.

24/ Union's Exhibit No. 23 shows the relationship between the wage rates in the Fibreboard contract, Foremost contract and BLS Occupational Wage Survey for the San Francisco-Oakland area for January 1958 and 1959. In January 1958, the Foremost rate was \$2.93 and Fibreboard's \$3.375; January 1959, Foremost \$3.04 and Fibreboard \$3.525. See page 7, supra, with respect to the wage rates received by Respondent's ILWU millwrights during the backpay period. See also Respondent's Exhibit No. 8(c).

25/ Under the "Pabco formula," the wage rate would have been \$5.40 as of August 1, 1967.

26/ Alaska Chapter of the Associated General Contractors, 119 NLRB 663, 667; East Texas Steel Castings Company, Inc., 116 NLRB 1336, 1337-1339, 1353; Pugh and Barr, Inc., 102 NLRB 562, 564-565.

The record is clear that the ILWU millwrights employed by Respondent not only performed work involving skills comparable to those of the terminated maintenance machinists, but also they were paid the same wage rates as the machinists from 1946 to July 31, 1959. Thus, on July 31, 1959, they, like the maintenance machinists, were receiving a wage rate of \$3.525 per hour. Subsequent to the machinists termination, the ILWU millwrights not only continued to work throughout the backpay period but in a few instances replaced the terminated maintenance machinists in the felt mill and paint shop. From the fact that the ILWU millwrights received no wage increases in 1959 or 1960, it is not too unreasonable to assume that the ILWU recognized the soundness of Fibreboard's claim that the terminated machinists' wage rates under the "Pabco formula," which also determined the ILWU millwrights' wage rates, were "too high." 27/ This is evidenced by the Company's action in terminating the machinists and subcontracting the maintenance work to an independent contractor at a wage rate less than the machinists had been receiving. Thereafter, beginning in 1962, the ILWU millwrights received the same wage increases as the ILWU production employees. 28/ The ILWU millwrights were paid during the backpay period the following wage rates: July 1, 1962--\$3.695 per hour; June 1, 1963--\$3.795 per hour; June 1, 1964 to June 1, 1965--\$3.895 per hour. 29/ For these and other reasons delineated below and based on Board precedent, it is found, that the wage rate during the backpay period paid to the ILWU millwrights in the performance of work comparable in skills to that which had been performed by the terminated machinists and whose wage rates for 13 years had been the same as the machinists is a reliable and logical yardstick and the best measure of what the maintenance machinists would have received during the backpay period. 30/

Indicative of the lack of realism in the position of the General Counsel and the Union that the dischargees should receive under the "Pabco formula" \$4.505 per hour in January 1965, is the cogent fact that in July 1965, Local 1304 entered into

27/ It strains one's credulity to believe the testimony of William Burke, Business Agent for the ILWU, that the reason the ILWU millwrights in Respondent's plant received no wage increase in both 1959 and 1960 was because he forgot all about them.

28/ However, at no time was the ILWU millwrights hourly wage rate the same as the ILWU production workers.

29/ These wage rates were the highest payable to maintenance machinists under any contract which Local 1304 had with other Bay Area employers. See Respondent's Exhibits Nos. 7 and 9.

30/ Maffey, a company official's testimony to this effect, stands uncontradicted which is confirmed by the ILWU millwrights' wage history after the machinists were terminated and also by Ferber, a union official, who on cross-examination testified that the bargaining unit employees did work "very similar" to Local 1304 maintenance machinists who were employed at other Bay Area plants with which the Union had contracts.

collective-bargaining agreements with Fibreboard, Foremost Food and Chemicals Company and Encinal Terminals which provided a \$4 per hour wage rate for the maintenance machinists employed by all these three companies. Also corroborative of the soundness of this \$4 rate is the fact that it was higher than the cost of living increases which accrued during the backpay period and more than the highest wage rate received by maintenance machinists during the backpay period who were working for other employers under contract with Local 1304. On the other hand, the terminated employees would receive under the Union's formula upon their reinstatement a wage rate higher than that in their contract executed in July 1965 with Respondent.

- On the basis of the facts detailed above, and applicable precedent, it is found that in computing what the discharges would have received during the backpay period beginning on September 14, 1962 and ending January 18, 1965, is the wage rates paid the Respondent's ILWU millwrights. 31/ The Board has repeatedly held that the loss of earnings of backpay claimants should be measured by the earnings of their replacements or other comparable employees of the Respondent during the period involved. 32/

Number of Jobs Available During Backpay Period

Question Involved

The sole question involved is the number of jobs available during the backpay period which is September 14, 1962 to January 18, 1965. Of the 53 employees terminated on July 31, 1959, it is agreed by the parties that there is no issue as to the 10 powerhouse employees. The remaining 43 terminated employees were classified as 39 maintenance machinists and 4 helpers. It was stipulated that on October 1, 1960, Fibreboard closed its Emeryville floor covering plant, and on July 1, 1961, it discontinued its Emeryville linoleum plant. On March 1, 1962, it moved its Emeryville roofing plant to its newly constructed Martinez plant and on February 1, 1964, automatic controls were installed in the powerhouse boilers thereby eliminating the need for firemen and on October 21, 1967, the powerhouse was abandoned. 33/

31/ In September 1962, the ILWU millwrights were receiving \$3.695; June 1963--\$3.795; June 1964--\$3.895; June 1965--\$3.98 1/2; June 1966--\$4.075, and June 1967--\$4.275. It should also be noted that from July 31, 1959, until June 1961, there was no increase in the ILWU millwrights' wage rates which would appear to indicate that the ILWU tacitly recognized that Local 1304's maintenance machinists' wage rate as of July 31, 1959, was excessive. This is further evidenced by the Company subcontracting the maintenance work to an independent contractor in August 1959 at a wage rate less than what the terminated machinists would have received under the Pabco formula. See page 935 of the transcript and Union's Exhibit No. 19.

32/ International Association of Heat and Frost Insulators, et al., 261 F.2d 347, 350 (C.A. 1).

33/ A detailed mathematical analysis of the Union's and Respondent's respective positions will be found in Union's Exhibits 26 and 27 and Respondent's Schedule 2, Appendix to its amended answer.

Parties' Contentions

- 12 - The Union claims that the normal complement as of July 31, 1959, the termination date, was 37 machinists and four helpers. However, the Company disputes this, alleging there were only 35 machinists and four helpers in the unit on July 31, 1959. The Respondent claims that of the force of 43 machinists and helpers on the seniority roster as of July 31, 1959, four were in excess of the normal complement. Their disagreement revolves around four machinists who as of July 31, 1959, were either on sick leave, leave of absence, or temporarily transferred to another job in the plant. These four machinists were: Holmes and Jobe who were ill; Arca on leave of absence, and Vanderbeck who had been temporarily transferred to the powerhouse. The Company claims that Swisher and Yoch, who were hired on July 20, 1959, replaced two of these four men and that the remaining two were not replaced at all. Thus, the Company claims there were four less jobs than men who were working as of July 31, 1959, thus eliminating Jobe, Holmes, Arca and Vanderbeck. 34/

The Union, on the other hand, argues that when Vanderbeck and Arca would have returned to their machinists' jobs, no one in the unit would have been laid off as the number of jobs available was 37 and not 35 as the Company claims. It was stipulated also that as of July 31, 1959: E. F. Schlatterbeck had been assigned to the roofing plant; J. Gronberg had been working as a foreman in the felt mill, and the storekeeper's job had been eliminated sometime prior to September 14, 1962. 35/

The Union also argues that the reduction of machinists and helpers as of August 1, 1959, was not the elimination of work or jobs but the assignment by the Company of these jobs to other classifications. The jobs, the Union states, continued to exist and the work would have been done by the terminated machinists, particularly those felt mill and paint shop jobs that were assigned by Respondent to the ILWU millwrights and ILWU production personnel after the unit employees discharges.

With respect to the closing of the floor covering and linoleum plants on October 1, 1960, and July 1, 1961, respectively,

34/ It was stipulated that employees Swisher and Yoch who were hired on July 20, 1959, were not told by Respondent when they were employed that their jobs were temporary or that they would be employed only until other employees returned to work. The Union concedes Swisher and Yoch were replacing Holmes and Jobe who were ill.

35/ See Union's Exhibit No. 26 which shows the distribution of the terminated employees as of July 31, 1959. Respondent's counsel, however, disagrees that employees Crispino and Reihl were assigned to the felt mill (although Appendix A of the specification alleges that they were assigned to the main shop). He also claims Gronberg was in the felt mill and not roofing as alleged in Appendix A of the specification and that Schlatterbeck was in roofing and not the main shop as alleged in the specification.

Local Union 1304's counsel agrees with Respondent's counsel that 11 machinists' jobs and a helper in the linoleum plant were eliminated. Union's counsel agrees also that when the central warehouse was demolished in December 1961, the storekeeper helper's job was eliminated. He denies, however, that the roofing helper was eliminated because when the transfer was made from the Emeryville plant to the Martinez plant on March 1, 1962, the oiling and greasing work still continued at the Martinez plant. Union's counsel alleges that prior to the machinists' and helpers' terminations that the roofing helper's job was performed by a combination of machinist and helper but Respondent's answer to this is that during the backpay period no helpers were employed by the independent contractor; all work was done by journeymen.

- 13 - Although the Union acknowledges that there was some elimination of work in the main machine shop as a result of changes in the floor covering, linoleum, and roofing departments; nevertheless, the reduction in jobs so affected was only five and not seven as the Company claims. The Company contends, however, that two jobs were eliminated when the independent contractor took over, namely, one job in the felt mill and one in the paint shop as no employee was any longer regularly assigned to the paint shop but this work was performed by a man assigned to the main shop. The Union disagrees, contending the work was not eliminated but assigned by the Company to other personnel outside the unit, pointing out that when those machinists who had been assigned to the felt mill and paint shop were terminated, the felt mill work was taken over by the ILWU millwrights and the paint shop job by an ILWU production employee. The Company also claims a helper's job was eliminated in the move of the roofing plant to Martinez whereas the Union asserts the job continued to exist but that the Company assigned it to a machinist.

The Union also introduced into evidence its Exhibit No. 21, a compilation and tabulation showing the number of hours worked by the independent contractor's millwrights in the Emeryville plant from December 24, 1963, to January 22, 1965, which work was done formerly by the terminated unit machinists and helpers. 36/ Appendix II of the Union's brief contends that 29 machinists' jobs and two helpers' jobs are the number of jobs available at the beginning of the backpay period. In the Union's pretrial statement and at the hearing, it took the position that there were 22 machinists' jobs and two helpers' jobs available.

It is Respondent counsel's interpretation of Union's Exhibit 21 that there were 11 of the contractor's millwrights doing machinists' work at Emeryville and either two or three men doing the work of pipefitters, welders and riggers, all of which duties the millwrights employed by the independent contractor performed at Emeryville. To this figure of 11, states Respondent's counsel, must be added five millwrights of the independent contractor who performed maintenance work at Martinez when it went into production about March 1962, or 16 millwrights in all who, in addition, also did pipefitting, welding and rigging. Accordingly,

36/ This exhibit should be read in conjunction with Respondent's Exhibit No. 18.

concludes Respondent, there are available 16 bargaining unit jobs for the reinstated machinists at Emeryville and Martinez.

To substantiate this figure of 16 available machinists' jobs, Respondent states that in 1960-1961 the Emeryville floor covering department was closed out which eliminated the jobs of 11 machinists and one helper. In March 1962, the roofing plant, except for the felt mill and mastipave machine, was moved to Martinez. On July 31, 1959, six machinists and one helper were employed in roofing, including one assigned to the felt mill. With the advent of the maintenance contractor, the felt mill and helpers' jobs were eliminated, thus leaving jobs for five machinists, one of whom serviced the mastipave machine when it was in operation so that when roofing moved to Martinez, a man still was needed at Emeryville to service the mastipave machine. Thus, claims Respondent, only four machinists' jobs were moved out of Emeryville. At Martinez an additional machinist was required (or a total of five) because of higher production there and because the machinists' work there included the oiling and also certain work which prior to July 31, 1959, had been performed at Emeryville by other crafts. Thus, when in March 1962, the roofing plant was moved to Martinez, the move resulted in a gain for one job for a machinist.

- 14 - In July 1959, continues Respondent's recital, the work in the paint shop had declined to the point where it no longer was sufficient to keep a man busy, and with the advent of the independent contractor, the machinist's job in the paint plant was eliminated. Shortly thereafter, the storekeeper's job was eliminated and also the helper in the truck shop. With the elimination of the linoleum and felt base plants and the removal of the roofing plant, alleges Respondent, the demands upon the main shop at Emeryville were reduced to the point where there was need for only five men instead of twelve.

Moreover, Respondent argues, even if the Union counsel's argument that the contractor employed more men than the number of jobs available is true, the number of men employed by the contractor is not an accurate measure of machinists' jobs available because the independent contractor's men did all of the work which formerly had been done by crafts other than the machinists, including the following who were terminated: ten electricians, nine pipefitters and five riggers and welders. Accordingly, Respondent Company concludes, during the backpay period, there were 16 jobs for maintenance machinists, including working foremen and mechanics, at the Emeryville and Martinez plants and no jobs for helpers.

It is the General Counsel's position, however, that the yardstick which should be used in determining the available number of jobs is to start with the 53 men involved and deduct from that number the stipulated reductions but he fails to state in his brief a definite figure. 37/ However, during the course of the hearing he claimed that it should be found there were 14 jobs available at

37/ It would appear that this figure would be 31 jobs.

Emeryville which includes two millwrights who performed pipefitting, welding and rigging. At Martinez, he states, there were eight men from March 1, 1962, to November 30, 1963; seven men from December 1, 1963, to June 30, 1964, and from July 1, 1964, to January 18, 1965, six men, including one man who did pipefitting, welding and rigging or a total of 20 machinists as of the end of the backpay period: 14 at Emeryville and 6 at Martinez.

Conclusions

The following facts are either stipulated or uncontradicted. There were 53 men on the maintenance unit seniority roster on July 31, 1959: 39 machinists, 4 helpers and 10 engineers and firemen in the powerhouse. On October 1, 1960, the Company discontinued its Emeryville floor covering plant. On July 1, 1961, its Emeryville linoleum plant closed. About December 1, 1961, the central warehouse was demolished. On March 1, 1962, the roofing plant was moved from Emeryville to Martinez when Respondent opened a new plant there. On February 1, 1964, automatic controls were installed in the powerhouse eliminating the need for five firemen. When the powerhouse was discontinued on October 21, 1967, the five remaining engineers' jobs were abolished. It would appear, therefore, that the closing of the floor covering department resulted in the loss of 12 jobs; the demolition of the central warehouse eliminated another job, and the move to Martinez resulted in a gain of one job. Accordingly, and since there were 43 machinists and helpers in the unit, the number of jobs remaining, exclusive of the powerhouse, was 31 as of September 14, 1962, the beginning of the backpay period.

- 15 - However, with the demise on July 31, 1959, of the maintenance machinists and helpers unit and with the advent of the independent contractor shortly thereafter, working conditions changed drastically due to shutdowns and various technological transformations. Work which previously had been performed by pipefitters, welders and riggers was done by the millwrights employed by the independent contractor. No helpers were used by the contractor. Work in the felt mill and paint shop, which had been performed prior to July 31, 1959, by Local 1304's maintenance employees, was performed after that date by ILWU millwrights and ILWU production employees, respectively. Noteworthy is the fact that rigging, pipefitting and welding duties which were not a part of Local 1304's unit work prior to July 31, 1959, have been performed by its members since their reinstatement in March 1965, at both the Emeryville and Martinez plants.

Based upon an analysis of the hours worked from December 24, 1963, to January 22, 1965, by the millwrights employed at Emeryville by the independent contractor, it is found that approximately 14 men were employed at Emeryville during the backpay period. 38/ The number of maintenance men required by the independent contractor to service the Martinez plant was five. 39/ Two jobs, one in the

38/ See Respondent's Exhibit No. 18 and Union's Exhibit No. 21; p. 37, note 134.

39/ When the Martinez plant was opened in March 1962, there was an unusual amount of capital construction, reconstruction and alterations incident to getting this new plant into operation. Consequently, the independent contractor employed eight

paint department and another in the felt mill, performed by ILWU men during the backpay period, still exist. Respondent's assigning these jobs to the main shop has no pertinency insofar as determining the number of jobs available. The reassignment of these jobs did not result in their elimination as there is still a need for them in the paint shop and felt mill. Accordingly, these two jobs which were performed by Local 1304's members prior to their termination should be reassigned to them. In sum, the number of maintenance machinists' jobs available are 21: 14 at Emeryville and 5 at Martinez and 2 in the paint department and felt mill. 40/

Pension and Retirement Benefits
For Hiatus Period

The issue concerns the Company's obligation, if any, to the 53 dischargees for the period from August 1, 1959, to September 14, 1962, referred to herein as the hiatus period, for which the Board ordered no backpay. This arises because the Board in its supplemental decision ordered that backpay should begin on September 14, 1962, rather than July 31, 1959, the date the employees were terminated.

- 16 The General Counsel contends that each of the terminated employees is entitled to current service benefits for the period from August 1, 1959, to the end of the backpay period and not merely for the backpay period itself which begins on September 14, 1962, and ends January 18, 1965. Each terminated employee, he argues, is entitled to full participation in Respondent's Retirement Plan from August 1, 1959, to January 18, 1965. 41/ It is his theory that retirement credits for the hiatus period are more in the nature of continuous service benefits, like seniority rights, rather than backpay as such and that the Board's award suggests there is a period of continuous service as to all employee rights and benefits except backpay per se. His basis for this contention is that the Company's Retirement Plan itself provides that "continuous employment" shall not be broken by layoffs up to 12 months, leave of absence or military service. Moreover, asserts the General Counsel, except in the case of employees who have already retired and would be entitled to an adjustment to their pension income, retirement credit for the hiatus period and the backpay period would not call for any present payment to employees.

The award of the Board which requires that the employees are to be offered reinstatement "without prejudice to their seniority or other rights and privileges" is interpreted by the Union to mean that the 1959-1962 hiatus period is a period of continuous employment

40/ millwrights the first year of the backpay period which number continued to decrease progressively until January 1965, when the number of men required to maintain the plant numbered five. The reorganized and reconstituted unit of reinstated employees presently provides for no helpers. The basis for this finding is the cogent fact that no helpers, only maintenance machinists, are mentioned in the parties' collective-bargaining agreement executed in July 1965.

41/ See Respondent's Exhibit No. 6.

for computation of all other benefits, even if no backpay is due. Therefore, counsel for the Union contends, that when the employee's retirement benefits are computed, a retrospective reference must be made to what he actually earned during his active employment. Accordingly, he argues, the Board's requirement that a dischargée should not be deprived of his other privileges of employment must be interpreted so as to allow a dischargée pension credits for the 1959-1962 hiatus period even though no backpay is awarded for that period on the theory that it should be accorded cognizance by requiring the 1959-1962 hiatus period to be considered one of continuous service. Consequently, he contends, it should be determined what the employee would have earned during this hiatus period (even though he is entitled to no backpay during this hiatus) by allowing him pension credits for that time. Thus, the Union's position is that the terminated employees are entitled to "prospective future retirement benefits" whether or not they were employed by the Respondent or made any deposits into the pension fund during the 1959-1962 hiatus period. 42/

Union's counsel takes this theory one step further arguing that although early retirement benefits are a legitimate deduction to the extent that the dischargées are entitled to backpay, nevertheless, "early retirement benefits for the hiatus period are not a legitimate deduction because [they] did not receive any backpay in this period." In resolving this issue, states the Union, the question that arises is the responsibility of the Company for pension benefits to be paid after retirement which are computed on the basis of what an employee "would have earned" in this 1959-1962 hiatus period if he had been employed. What is involved, the Union emphasizes, is the computation of "future benefits" rather than the computation and award of backpay.

Furthermore, the Union argues that the Company has tacitly accepted the principle of retirement benefits for the hiatus period, i.e., that service during 1959-1962 should be counted as it does this in determining employee eligibility for increased vacations where these employees have been reinstated to their former or substantially equivalent jobs. This, claims the Union, is a cost - 17 - item to the Company but it is not payable until the increased vacation is actually taken. The same rationale, the Union argues, should apply to pension benefits so that retirement benefits would be determined as though 1959-1962 was a period of employment. Accordingly, the Union claims, the only meaningful way to consider this a period of continuous employment is to credit the employees with "current service benefits," as that term is used in Section 12 of the Retirement Plan for the earnings he would have received if he had been employed in the hiatus period from August 1, 1959, to September 14, 1962. 43/ In short, Union counsel's argument is

42/ See Union's Exhibit 28 which details the Union's contention as to what the monthly pensions should have been for those individuals who retired in the period from August 1, 1959, to January 18, 1965, if they had been given continuous credit for both the hiatus and backpay periods.

43/ Section 12(a) of Respondent's Exhibit 6 provides: "The current-service benefits [shall be computed according to a detailed formula]." Section 12(b) provides that "the

reduced to the proposition that when an employee retires, his pension should be computed so as to accord the employee continuous service during this hiatus period at a rate of pay that he would have earned during that period of time.

It is also the contention of the Union that pension credits under the Company's Retirement Plan (Section 26, Respondent's Exhibit 6) which would have accumulated to the account of claimants had they been in employment during the hiatus period, are akin to "other rights and privileges" protected with reinstatement rather than wages which would be part of backpay. The supplemental decision listed reinstatement "without prejudice to their seniority rights and privileges" separately from the requirement to make the said employees "whole" with backpay from the date of the decision to the offer of reinstatement. This, Union's counsel contends, means that while backpay is not due for the hiatus period, this 1959-1962 period is a period of continuous employment for "seniority rights and other privileges."

The issue that arises is the responsibility of Fibreboard for "present service benefits", [Section 12(a) of the Plan] which are translated into income only after retirement, accumulated by the employee during the hiatus period based on what he would have earned in this period. It is argued that such accumulated credits which would result in benefits only at some future time are not backpay, but rather a component of rights and privileges of employment, like seniority, which must not be prejudiced in reinstatement. Reinstatement "without prejudice to . . . other rights and privileges" includes the pension credits an employee would have received had he been in service continuously from the time of his termination to the offer of reinstatement, claims the Union. These pension credits can only result in payment, if at all, at a future retirement date. Accordingly, the Union's argument concludes, these credits are not backpay, but rather the right to future pay, and are not subject to the tolling of backpay in the hiatus period.

Respondent counsel's analysis of the Union's argument is that if this theory were to be given credence, then in determining pension benefits which would become payable on normal retirement, the terminated employees would be treated as if they had made pension contributions throughout the 1959-1962 hiatus period. If this theory were accepted, he argues, Fibreboard would not be credited with early retirement benefits paid during the hiatus; the discharges would be - 18 - credited with earnings during a period for which they were denied backpay; they would be credited with pension plan deposits which they never made; and, therefore, entitled to be treated during the hiatus period as having been actively employed and earning wages and at the same time as being retired and entitled to pension benefits. "Aside from the irrational nature of the Union's contention," the Respondent argues, "it ignores the fact that Fibreboard as well as the employees contribute to the pension plan." This theory, if

current-service compensation, upon which current-service benefits shall be based, shall be the compensation received during each calendar year or portion thereof, of participation in the Plan."

accepted, states Company's counsel, would require it to pay, in addition to its own contributions for the hiatus period, the contributions of the discharged employees. This is untenable, it is urged, as pension contributions paid by an employee are part of an employee's pay. Thus, concludes Respondent, the Union seeks backpay for the hiatus period contrary to the Board's order which limits backpay to the period from September 14, 1962, the date of its supplemental decision, to January 18, 1965, the stipulated termination date of the backpay period.

Conclusions

The terminated employees should not be entitled to any monetary award for the hiatus period but they are entitled to certain credits, explicated below, for this period of time as if they actually had been in continuous service. Thus, they should be accorded those rights which are given them under Sections 6(b), 13(a), 14 and 15 of the Retirement Plan which provisions make length of service a factor to be considered in determining their eligibility to participate under the Retirement Plan; namely, their minimum and maximum benefits, death benefits, and the vesting period for retirement benefits.

The General Counsel's argument that each terminated employee should be accorded the option of electing to receive current-service benefits for the hiatus period, along with the obligation of paying the required pension deposits or having said deposits treated as a deduction against the backpay due him or waiving current-service benefits, along with the acceptance of net backpay due him, without deductions for pension deposits, is without merit and without precedent.

If the General Counsel's theory cannot be accepted, the Union's contention that the terminated employees should be given credit for deposits which they did not pay into the Plan during the hiatus period is an a fortiori situation. These arguments, regardless of how they are characterized are, nonetheless, if given credence, tantamount to finding that the discharges are entitled to backpay for the hiatus period. Not only would this violate the Board's backpay order to exclude the period from August 1, 1959, to September 14, 1962, but no precedent for such an unorthodox concept has been cited by Counsel nor is the Trial Examiner aware of any Board decision so holding.

It would appear that both the General Counsel and Union's counsel fail to distinguish the substantive incidences which flow from a break in service in computing pension credits as contrasted with crediting an employee with earnings during the hiatus period when he was not working. This is particularly so, when it is considered that the major portion of the funds for this plan is contributed by the Company based upon the covered payroll of each employee plus a past service contribution. However, no credit is received, insofar as the dollar amount of the pension is concerned, during a break in the employee's service except for vesting early retirement. Accordingly, the General Counsel and Union's contentions are found to be without merit and, therefore, must be disallowed.

Compulsory retirement date for those
dischargees over 60 years of age on
January 1, 1958

The parties disagree as to the automatic or compulsory retirement dates of seven employees. ^{44/} Under the Retirement Plan of the Company, individuals normally retire when they reach the compulsory retirement age of 65. It was stipulated by the parties that employment terminates at the compulsory retirement date and thus ends backpay eligibility. The General Counsel and the Union contend that January 1, 1963, is the appropriate date for each of the seven men. Each of these seven men had reached age 60 on January 1, 1958, their "unit eligibility date" ^{45/} but had not yet attained the compulsory retirement age of 65.

Section 17(b) of the Retirement Plan provides as follows:

For participants who have attained age sixty (60) but have not yet attained the age of sixty five (65) at [January 1, 1958], ^{46/} the normal retirement date shall be the first day of any calendar month elected by the participant following the attainment of age sixty five (65), but not later than the first day of the calendar month next following the attainment of the fifth birthday subsequent to [January 1, 1958]. ^{47/}

Respondent states that under the wording of Section 17(b) of the Retirement Plan, supra, the compulsory retirement dates of these men fell prior to the commencement of the backpay period. Moreover, claims Respondent, the compulsory retirement dates and their method of computation is so clearly explained in the Plan itself that the General Counsel and Union should not be permitted to change it by parol evidence which they seek to do as detailed below.

The General Counsel and Union allege that the Union and Respondent had entered into an oral agreement in 1957, amending Sections 6(d), 17(b) and (e) of the Retirement Plan so that those members of the unit who joined the plan and who were over age 60 as of January 1, 1958, but not yet 65, would not be required to retire until five years after that date, or January 1, 1963. These oral representations by the Company, claims the Union and General Counsel, were part of the basis for the Union accepting the Retirement

^{44/} Gronberg, Holmes, J. P. Johnson, Capps, Crispino, Hamidy and Bennett.

^{45/} See Respondent's Exhibit No. 6, Section 7(d)(1), page 16, "Retirement Plan" and Exhibit B of Respondent's amended answer, which provides that the unit eligibility date for East Bay Union of Machinists, Local 1304, United Steelworkers of America, AFL-CIO, the Union herein, shall be January 1, 1958. See also Section 17(e), page 33 of the Plan.

^{46/} Section 17(e).

- 20 - Plan. Accordingly, they urge, these seven men should not be forced to retire earlier than they had been informed by Respondent that they would have to retire. This, alleges the Union, was the mutually understood interpretation of the language of Section 17(b) and (e) of the Retirement Plan. This interpretation, states the Union, was reiterated by the Company in early 1965, in the negotiations which eventuated in an agreement between the Union and Company, effective July 15, 1965.

The Union claims that its Exhibit No. 16 is a written list of retirement dates of all the unit employees supplied to the Union by the Company during the 1965 negotiations which confirms and validates not only this purported oral agreement but the exhibit itself shows that the retirement dates of these men to be January 1, 1963. Additional corroboration of this oral agreement, claims the General Counsel and the Union, is evidenced by a letter dated March 24, 1965, with an attached Schedule "A" (Union's Exhibit No. 17), which the Company's counsel wrote to the Board's Regional Office and reveals the Company agreed that those members of the plan over 60 years of age on January 1, 1958 (the unit eligibility date), had five years from the time they joined the Retirement Plan or until January 1, 1963, before they would be required to retire. Thus, claims the General Counsel and Union, there was an oral agreement by the Company that these men, whose ages were between 60 and 65, as of January 1, 1958, and who needed five years to qualify for the Retirement Plan, would be permitted to work for five years from January 1, 1958, the date they joined the Plan, or until January 1, 1963, in order to qualify for a pension.

The General Counsel also argued at the hearing that Section 17, page 32 of the Retirement Plan provides for "deferred retirement" in certain instances. "The retirement plan," he states, "does not make any attempt to cover all of the possible instances where deferred retirement would be appropriate" which accounts for the genesis of this purported oral agreement. To substantiate this theory, the General Counsel refers to Section 18 which he claims provides for deferring an employee's retirement date if certain conditions are met. ^{48/} His argument continues that "deferred retirements are mentioned in the [plan] but not clarified, and therefore oral evidence is admissible" to show "deferred retirements" were granted these seven employees.

Respondent replies, however, that the situation in issue is specifically provided for in Section 17(b), page 32 of the Retirement Plan, at page 19, *supra*. The Respondent Company's explanation for this letter (Union's Exhibit No. 17), which it sent to the Regional Office on March 24, 1965, in which reference is made in Schedule A to these seven men as follows: "Retirement date 1/1/63" as being the result of a careless error and careless reading of the retirement plan provisions by the company clerk who prepared the data.

^{48/} Section 18 provides that an employee may remain in active employment after his normal retirement date, for a period not to exceed 12 months, if the Plan's Board of Directors so approve.

The Testimony

- 21 - David Arca, Recording Secretary of Local 1304, a unit employee, who worked in Respondent's paint department at the Emeryville plant, testified that he was present at all the negotiating sessions between the Company and the Union in 1957. Arca testified it was orally agreed at that time between Company and Union conferees that "those members [of the Union] who were over 60 years of age would have five years from January 1958, before they would be compelled to retire."

Lloyd Ferber, Business Representative for Local 1304, the Union herein, testified that he was present at the negotiations in 1957 and also in 1965 when a collective-bargaining agreement was executed on July 7, 1965. ^{49/} He testified that in November 1957, during the course of bargaining negotiations, he asked the company officials to permit the machinist members of Local 1304 who were over 60 years of age and who would not have the requisite five years' service to qualify for a pension at age 65, to be allowed to work five years after the effective date of the Plan, which was January 1, 1958, or until January 1, 1963. This union proposal, testified Ferber, was agreed to by the company representatives.

Ferber also testified regarding negotiations between the Company and Union that began after the Supreme Court's Fibreboard decision and which led to the execution on July 7, 1965, of a collective-bargaining agreement. He stated that the union representatives asked the company negotiators why certain named discharges had not been offered reinstatement. The company representatives, testified Ferber, produced and showed the union negotiators a compilation captioned "Retirement Plan Status of the Members of the East Bay Union of Machinists, Local 1304, terminated on 7/31/59." ^{50/} This compilation shows the compulsory retirement dates of the seven employees to be January 1, 1963.

Robert Baldwin was employed by Fibreboard from January 1956 through October 1959, as a personnel official. In 1957, he met at various times over a period of 2 to 3 months with officials of all the unions who represented employees at the Emeryville plant, including Local 1304, the Union herein, to explain the Company's Retirement Plan to them and to answer their questions regarding the Plan. ^{51/} Baldwin testified that at none of these various informational meetings were officials of Local 1304 told that employees whose ages were between 60 and 65 on January 1, 1958, would be entitled to work five years after that date in order to qualify for pensions under the Retirement Plan. The Company introduced additional evidence showing that employees belonging to other unions at the plant who were over 60 on the Plan's effective date, nevertheless retired at age 65, before putting in the required five years to

^{49/} Respondent's Exhibit No. 10(a).

^{50/} See Union's Exhibit No. 16, particularly, the fourth column headed "Compulsory Ret. Date."

^{51/} See Respondent's Exhibits Nos. 23, 24(a) and (b).

qualify under the Plan, and one such employee was Floyd Turner, a member of the Pulp, Sulphite and Paper Mill Workers Union which union became affiliated with the Plan on February 1, 1958, one month after the Union herein and who was compelled to retire at 65 before putting in five years under the Plan. 52/

- 22 - R. C. Thumann, a company official, attended all the informational sessions in 1957 which also were attended by officials of all the various unions representing Respondent's employees. At these meetings the Plan was explained and copies of the Plan distributed to the union representatives. The Plan was discussed by those present and questions asked by the union officials were answered by company representatives. Thumann testified that one of the questions involved compulsory retirement dates which he explained to all present, including Local 1304's representative. He denied that at any of these meetings or at any other time, he or any company representative stated or represented to the Union, that an employee who on January 1, 1958 (the unit eligibility date of Local 1304), who was between the ages of 60 and 65, would have five years from January 1, 1958, before he would be required to retire.

The issue to be decided is whether these seven terminated employees who were between 60 and 65 years of age on January 1, 1958, had their compulsory retirement dates postponed to January 1, 1963, by an oral agreement alleged to have been entered into by the Company and Union officials.

Conclusions

It is found that the compulsory retirement dates of Gronberg, Holmes, J. P. Johnson, and Capps occurred prior to September 14, 1962, the beginning of the backpay period. Crispino's compulsory retirement date was October 1, 1962, and Hamidy and Bennett, December 1, 1962. 53/ For the reasons hereinafter explicated, Union Representative Lloyd Ferber's testimony is not credited that he made an oral agreement with R. C. Thumann, a company official, that these men who were over 60 years of age on January 1, 1958, would be allowed five years or until January 1, 1963, in order for them to be eligible to qualify for benefits under the Retirement Plan. Corroborative of this finding is the following letter dated June 21, 1957, bearing the signatures of Ferber and Arca, union officials, to the Company which reads as follows:

The Fibreboard pension plan has been presented to the members of this union working in your plant, and has been accepted by the Machinists in principle. However, there is one point we would like to ask to be clarified and also ask for consideration on, that is the fact that the machinist group were off work for some 14 weeks through no fault of their own during the year 1949 due to the labor difficulties with another union. We are requesting that an adjustment be

52/ See Respondent's Exhibits Nos. 25, 26, 27, and 28.

53/ Another employee, L. R. Jobe, died on November 4, 1959, prior to the date the backpay period commenced.

considered for the above-stated period. We believe such adjustment could be made in accordance with Section 2, paragraph 1, page 23, of the Fibreboard pension plan. 54/

- 23 - It seems incongruous that this matter referred to in the letter above, which is much less important than the alleged five-year oral agreement, was in writing and, yet, the waiving of the five-year eligibility period was alleged to have been agreed to orally. It is not too unreasonable to assume, therefore, that no such oral agreement, as the Union claims, ever existed. Further confirmation of this finding is evidenced by Respondent's Exhibit No. 29, a letter from Ferber to the Company dated December 4, 1957, ratifying an oral agreement previously reached in the course of negotiations regarding the Retirement Plan. This shows the union officials knew the proper way to validate a previously agreed upon oral understanding was to put it in writing. By analogy, it is found no such oral agreement existed.

With respect to the letter written on March 24, 1965, by Attorney Plant, Respondent's counsel, to M. C. Dempster, a compliance officer of the Board, in an effort to obtain an agreed computation of backpay and which lists the retirement dates of these men as January 1, 1963, it is believed this was a coincidental error and not confirmation of the fact that the Company agreed that the retirement dates of these men were January 1, 1963. 55/ Nor is it believed it constitutes an admission against interest as this letter to the Regional Office was written in the course of settlement negotiations.

Section 17 of the Retirement Plan as amplified by subsection (e), clearly and unambiguously states that "the normal retirement date of employees who have attained age 60 but not 65 on January 1, 1958, shall be the first day of any calendar month elected by the participant following the attainment of age 65 but not later than the first day of the calendar month next following the attainment of the fifth birthday subsequent to January 1, 1958." The contention of the General Counsel that Ferber's testimony of this alleged oral agreement with Thumann is dispositive of the issue is without merit. This testimony is neither credited nor is it "substantial evidence."

Assuming, arguendo, such an oral agreement was made, nevertheless, reliance on it would be a violation of the parol evidence rule. The Board has held it will not accept parol evidence to establish modification of a written document; 56/ nor to explain its terms if the language speaks for itself, 57/ as it is presumed that all oral understandings on the subject matter are merged in the written instrument. 58/ In view of the fact that the pertinent provisions of Section 17(c) of the Retirement Plan are clear and unambiguous and are not reasonably susceptible of a different

54/ Respondent's Exhibit No. 20.

55/ See Union's Exhibit No. 17 and Respondent's Exhibit No. 28.

56/ Jersey Contracting Corporation, 112 NLRB 660.

57/ Electro Metallurgical Company, 72 NLRB 1396; Hood Corp., 147 NLRB 273.

58/ Petersen & Lytle, 60 NLRB 1070, Footnote 1.

interpretation, there is no occasion nor need for the interpretation proposed by the General Counsel and Union. 59/

Nor is the Union's argument well taken that Sections 17 and 18 of the Retirement Plan which provide for deferred retirement-controlling. These sections are inapplicable as they have reference to a situation where the Board of Directors may defer an employee's retirement for a maximum of 12 months. This is not the case here. Accordingly, it is found that the compulsory retirement dates of the seven individuals named above occurred on the following dates:

Gronberg	February 1, 1962
Capps	June 1, 1962
J. P. Johnson	August 1, 1962
Holmes	September 1, 1962
Crispino	October 1, 1962
Hamidy	December 1, 1962
Bennett	December 1, 1962

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Severance Payments

It was agreed by the parties that severance pay is remuneration given an employee when he is terminated but for which he did not do any actual work. Commerce Clearing House "Dictionary of Law Terms, Second Edition--1953" at page 112, defines "severance pay" as "A lump-sum payment by an employer to a worker whose employment is permanently ended, usually for causes beyond the worker's control. The payment is in addition to any back wages due the worker." It would seem implicit in paying such sum as a dismissal wage that it is being paid to the terminated worker "in recognition of services rendered. . . . The idea behind dismissal wages is to aid the worker while he is seeking employment elsewhere or adjusting himself to a new job." 60/

The Company contends that severance payments made to the employees on July 31, 1959, at the time they were terminated, should be deducted from any backpay to which they are found entitled. Both the General Counsel and Union disagree with the Company's proposition. The General Counsel claims that severance payments made prior to the commencement of the backpay period should not be allowed as a credit against backpay, because such payments were in lieu of wages during a period for which no backpay is due. He conceded severance pay is a proper credit against backpay but only where severance wages were paid during a period of time when backpay was accruing, but here, he argues, the severance wage was paid prior to the date of discharge and since backpay was not accruing at the time, it is nondeductible.

The Union also denies Respondent's contention that severance payments should be a deduction against backpay because these payments were not made by the Company to the terminated employees during the backpay period but prior thereto, namely July 31, 1959. Inasmuch as the backpay period did not commence to run until September 14,

59/ Century Papers, Inc., 155 NLRB 358, 361-362.

60/ Labor Dictionary, P. H. Casselman (1949) Philosophical Library, New York, N.Y.

1962, argues the Union, this is not a valid deduction as there were no continuing severance payments to be deducted from backpay. The Union claims that those Board decisions allowing severance pay as an offset apply only to payments made during the backpay period and not, as here, where no backpay was awarded by the Board from 1959 to 1962, the so-called hiatus period.

Respondent, in answer to the General Counsel and Union's contentions, states that upon termination of the employees, and in consideration of severance of the employment relationship, Fibreboard paid each of them a dismissal allowance based upon years of service in order to tide them over until they found other employment. It is the Company's theory that by reason of the Board's order requiring the terminated employees reinstatement and backpay, employment was not in fact severed and the consideration for the severance allowance failed. Therefore, argues Respondent, it is entitled to be credited with the amount of severance allowance against backpay for the following reasons: (1) it was not given as wages but in consideration of the severance of the employment relationship and (2) by reason of the Board's supplemental decision, the employment relationship was not severed and the consideration for the allowance failed.

Conclusions

- 25 - The General Counsel and Union's theory which would make severance payments deductible dependent on whether they were paid during the backpay period is a distinction without a difference. No authority nor convincing reasons are given for this distinction. The undeniable fact is that a severance allowance for 2 weeks' pay was made in good faith and in contemplation of the employment relationship being terminated. It was not severed inasmuch as the employees have been ordered reinstated, so that not to permit the deduction of these payments would be equivalent to penalizing the Respondent as the purpose behind backpay order is to make an employee whole and not to aggrandize him by ordering Respondent to pay twice. ^{61/} Moreover, since the terminations were nullified by the reinstatement order, this resulted in a failure of consideration. It is found, therefore, that the equitable solution is to permit deduction of these severance payments from the amount of gross backpay owing. ^{62/}

Interest on Backpay

There is disagreement among the parties as to whether these terminated employees who are entitled to backpay should also receive interest in view of the fact that the Board's supplemental decision contained no order that interest be paid.

^{61/} See page 36, infra.

^{62/} The General Counsel's contention that these severance payments were not discussed with the Union is not borne out by the facts. The original decision states that these severance payments were negotiated with the Union although not called for under the terms of the collective-bargaining agreement. 130 NLRB at page 1573.

Conclusions

Originally, the Board did not order payment of interest on the net backpay award where it was not required by the Board's original order. 63/ Later the Board allowed interest on earnings lost as a result of "discrimination," even when the original order was silent thereon. 64/ Thereafter, the Board on December 21, 1956, did not disturb a Trial Examiner's holding that interest should accrue on a quarterly basis from the end of each quarter for which backpay is owed with interest at 6 percent per annum. 65/ It is, therefore, recommended that interest be paid on the net backpay from September 14, 1962, as provided in Isis Plumbing & Heating Co., 138 NLRB 716.

Whether certain terminated employees forfeited their rights to reinstatement and backpay because of alleged picket-line violence

Immediately after the Respondent Company terminated the unit employees on July 31, 1959, East Bay Union of Machinists, Local 1304, United Steelworkers of America, AFL-CIO, the Union herein, established a picket line at the Emeryville plant at 6 p.m., on the same day. On August 10, 1959, Ray Bradford, International Representative of the Pulp and Sulfide Union, which represented some of the Company's employees, was stopped by Lincoln Beck, a picket and member of Local 1304. As Bradford attempted to enter the plant premises, in order to arrange for his members to report for work that day, Beck blocked him, then shoved him away from the plant entrance and continued to push and shove him until he stumbled and lost his balance, whereupon a policeman intervened.

Bradford then requested the police to give him and his men (who were Company employees and members of the Pulp and Sulfide Union) protection in order that they might report for work that day. While the police were considering his request, Bradford spoke to Local 1304's union officials who were picketing the plant entrance. After the conversation ended, Bradford then told the police that the members of his union had decided not to attempt to gain access to the plant as the officials of the picketing Union, Local 1304, had "threatened" that if they attempted to come to work that morning "their porches would be blown off and if it took six months to get them they would be taken care of by the machinists or by someone." 66/

63/ Mooney Aircraft, Inc., 148 NLRB 1057 at 1059.

64/ Local 138, International Union of Operating Engineers, 151 NLRB 972, 974; Lozano Enterprises, 152 NLRB 258, 260, footnote 8. Both these cases involved flagrant examples of discrimination as distinguished from the present case where there was no orthodox discrimination practiced, namely, a discharge for union activities or membership.

65/ American Compress Warehouse, 156 NLRB 267, 276, footnote 35, enfd. 374 F.2d 573 (C.A. 5).

66/ The above recital is based on the credited and uncontradicted testimony of R. C. Thumann, Director of Industrial Relations for Fibreboard.

On August 19, 1959, about 7 a.m., an automobile containing maintenance employees was en route to the Company's Emeryville plant to report for work. These men were replacements hired by the independent contractor to whom the Company had contracted the maintenance work formerly performed by Local 1304's members until their termination on July 31, 1959. A short distance from the plant, on the street leading to the entrance gate, David Arca, a Local 1304 official and one of the terminated maintenance employees, 67/ moved his pickup truck from the curb where it was parked to the center of the street directly in front of the independent contractor's employees' automobile compelling it to halt in order to avoid hitting Arca's truck. While the car was so stopped, it was pelted with various solid objects by persons congregated on both sides of the street. None of the automobiles were able to enter the plant premises that day.

Two days later, on August 21, company employees, including the terminated employees' replacements, met at a prearranged location, formed a caravan of six to eight cars, and proceeded in single file, one car behind the other, and drove at a speed of approximately 5 miles an hour toward the plant. As they drove down the street to the plant's gate entrance, in order to go to work, David Arca again drove his truck from the curb where it was parked toward the center of the street and attempted to block the first car in the caravan from entering the plant. This first car eluded Arca's truck by driving around it and entered the plant gate. The next car in line, however, was not as successful as Arca's truck rammed into this second auto compelling it to come to a complete stop. 68/ Thereupon, men who were standing on the curb, on both sides of the street, rushed out into the roadway as soon as this car was brought to a stop, rocked it back and forth until it was overturned. 69/

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While the car was in an overturned position, wheels in the air, and occupants upside down, some men threw solid objects at it, including "a chunk of concrete." One of the pickets who threw an object at the car was Carl Olson, a terminated employee. Olson, from a distance of about 20 feet, threw a plastic bottle, 3 by 4 inches in size, containing 4 ounces of yellow paint at the overturned auto but it missed. The police then rushed to the scene of the disturbance and under their protection and guidance, the remaining automobiles in the caravan proceeded into the plant premises. Shortly afterwards, the police and fire departments righted the overturned car, and released the trapped occupants.

67/ David Arca is recording secretary and on the executive board and negotiating committee of Local 1304, and was formerly a plant steward.

68/ Arca's version is that this auto "hit the front end of my truck." He denied he had any prearranged plan with his fellow union members that when he blocked the caravan of cars that they would then proceed to overturn the cars of those employees trying to enter the plant to go to work.

69/ Arca, who worked at the Emeryville plant for 16 years, testified he did not recognize any of the men who tipped over the auto.

On August 19, 1959, almost 3 weeks after the Union had established its picket line at Fibreboard's Emeryville plant, Attorneys James K. Parker and Charles Hanger, of the law firm of Brobeck, Phleger & Harrison, who represent the Respondent, were en route to the plant to transact business. As they approached the plant about 10 a.m., they noticed pickets carrying signs bearing the legend "Locked Out" in large letters and underneath it in smaller printed words "East Bay Union of Machinists, Local 1304." Both Parker and Hanger testified as follows: As they were about to enter the plant premises, Lincoln Beck, a terminated employee, walked toward them, stopped Parker by placing his hand on Parker's chest and asked him for identification and where he was going. Parker answered Beck that he had business in the plant and requested him to remove his hand from his chest so that he would be able to enter the plant. 70/ After Parker repeatedly requested Beck to permit Hanger and him to enter the plant but to no avail, Parker's recital of what occurred continues as follows: Beck then gave a "head signal" toward the direction of 20 to 30 men who were congregated a short distance away, whereupon these men came over to the location where Beck had stopped Parker and Hanger and "surrounded" them in a semicircle. 71/

Thereupon Parker asked Beck his name and after receiving no response, one of the men in the group surrounding them whose name was Richard Groulx, a union official, stepped forward and struck Parker in the stomach and in the area of his ear. Hanger, in an effort to aid Parker, grabbed Groulx "in a big bear hug, pinning Groulx's arms to his side." David Arca, a union official and terminated employee, then struck Hanger twice in the mouth dislodging two teeth. 72/ At that point in the attack, two policemen intervened, one restraining Groulx and the other Arca, placed them both under arrest and drove them to the Emeryville Police Station. Charles E. Hanger, the other attorney involved in this incident, corroborated Parker's version of what occurred as they attempted to enter the plant on August 19.

On August 24, 1959, the Alameda County Superior Court of California, issued a preliminary injunction against the Union limiting picketing to two pickets at each gate of the plant. 73/ - 28 - Thereafter, on September 4, 1959, the preliminary injunction was modified so as to prohibit all picketing and congregating by union members within 2 blocks of the plant. 74/ The Union and its members, Arca, Beck, and Olson, were later cited and found guilty on October 7,

70/ Beck testified Parker told him "it was none of my business, that they were going to go into the plant."

71/ Beck denied he gave a prearranged head signal towards his fellow pickets to come over to where he was talking to Parker and Hanger in order to give him help.

72/ Arca's denial on direct examination that he struck Hanger or that he saw anyone strike Parker is not credited. Nor is Beck's denial on direct examination that Arca struck Hanger credited.

73/ Respondent's Exhibit No. 22(a).

74/ Respondent's Exhibit No. 22(b).

1959, of contempt of court for violating the injunction of the California Superior Court by the acts and conduct detailed above. 75/

The question involved here is whether Arca, Beck, and Olson were rendered ineligible for reinstatement because of their conduct described above and thus not entitled to any backpay.

The Respondent Company contends that by reason of the fact that each of these three men committed violence on the picket line maintained about and in the vicinity of the plant, following retention of the independent contractor, that they thereby forfeited any right to reinstatement and backpay. The Respondent claims the Bradford incident, Beck and Arca assaulting Respondent's attorneys, preventing employees from entering the plant, the overturning of the car, and Olson throwing an object at the overturned automobile, is such misconduct as to bar the three participants from reinstatement and backpay. Respondent argues that conclusive proof of their guilt is evidenced by the State court's contempt proceedings in which they were found guilty of picket-line violence.

The Union, however, contends that the conduct of these three men was, at worst, the "animal exuberance" that occasionally occurs in the pressure of the strike situation; that there was provocation in the employer's "flagrant and deliberate" refusal to bargain while "secretly" negotiating to contract out the work of men with up to 30 years' service who only had 4 days' notice of termination and that the findings in the State court's contempt proceedings are neither binding on the Trial Examiner nor should it be considered in the proceedings at bar.

The Union additionally claims there is a more fundamental bar to the admission of the findings and order in the State court's contempt proceedings: namely, the three men here involved exercised their constitutional privilege not to testify at their trial. The Union argues that to rely on the record given in the State court would be equivalent to penalizing these men for exercising their constitutional right not to testify because the State court's findings and conclusions were based on a record bare of the three employees' side of the story. 76/ Furthermore, continues Union's counsel, Section 10(a) of the Act requires the Board to make its own determination of what effectuates the purposes of the Act, independently of the determination of any other body. This is a

75/ See Respondent's Exhibits Nos. 11(a), 11(b), and 12. See also General Counsel's Exhibits Nos. 4 and 5, involving ancillary litigation in 1964 and 1965 between the parties in the U.S. Court of Appeals and California District Court of Appeals.

76/ Proceedings which are civil in nature permit an adverse inference to be drawn from the failure of a party to testify even where the privilege against self-incrimination is invoked. 8 Wigmore, EVIDENCE, §2272 (3rd ed. 1940). See also Sterling-Harris Ford, Inc., 315 F.2d 277, 279 (C.A. 7), cert. denied 375 U.S. 814; Strathmore Securities, Inc., Securities and Exchange Commission Release No. 8207, December 13, 1967.

question of credibility of witnesses, he concludes, which the Trial Examiner is in the best position to make a judgment. The General Counsel states that none of these three former employees engaged in any violence or any conduct or misconduct which would warrant forfeiture of their reinstatement and backpay.

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Discussion

Where employees engage in picket-line misconduct, inhibiting the peaceful settlement of a labor dispute, the Board may permit the employer to refuse to reinstate those who engaged in unlawful activities during a strike, although the employer has not lawfully dismissed them. 77/ Those decisions involving tortious activities by striking employees which are sufficient to restore the employer's power of discharge during an unfair labor practice strike, in some instances, are difficult to reconcile and not clearly defined by the decisions. 78/ See pages 33-34, infra.

The Supreme Court in N.L.R.B. v. Fansteel Metallurgical Corp., 79/ indicated that any act of employee misconduct during a strike was a bar to reinstatement. The Court held that the "illegal" violence of the employees in a "sit-down" strike (seizing and maintaining possession of a plant) provided an "independent and adequate" basis for the refusal to reinstate them. The Court stated that any unlawful and unprotected activity which tends to detract from the peaceful settlement of labor disputes affords an employer the right to discharge offending workers, regardless of his own previous conduct. 80/

Subsequent cases have recognized the possibility of abuse in automatically allowing an unfair labor practice employer to discharge strikers for such minor incidents as are predictable adjuncts to a heated strike, and have refused to consider as serious enough to bar reinstatement certain types of misconduct occurring during an unfair labor practice strike. 81/ Thus, the Fansteel

77/ Kohler Co., 128 NLRB 1062.

78/ Acme-Evans Co., 24 NLRB 71, 102-103, enfd. 130 F.2d 477 (C.A. 7); N.L.R.B. v. Longview Furniture Co., 206 F.2d 274, 276-277 (C.A. 4) remanded 110 NLRB 1734, the dissent at page 1739; Patterson-Sargent Company, 115 NLRB 1627; N.L.R.B. v. Trumbull Asphalt Co., 327 F.2d 841 (C.A. 8); and Oneita Knitting Mills, Inc. v. N.L.R.B., 375 F.2d 385 (C.A. 4).

79/ 306 U.S. 240 (1939), modifying 98 F.2d 375 (C.A. 7), reversing 5 NLRB 930 (1938).

80/ See Southern Steamship Co. v. N.L.R.B., 316 U.S. 31, where a mutinous ship crew's conduct was held to be such gross misbehavior as to preclude reinstatement.

81/ N.L.R.B. v. Puerto Rico Paving Mills, Inc., 293 F.2d 941 (C.A. 1); N.L.R.B. v. Wichita Television Corp., 277 F.2d 579 (C.A. 10), cert. denied 364 U.S. 871; N.L.R.B. v. Cambria Clay Products Co., 229 F.2d 433 (C.A. 6); See also N.L.R.B. v. Washington Aluminum Co., 370 U.S. 9.

doctrine has been limited to situations involving a high degree of violence and not "minor disorders." 82/

- 30 - The Taft-Hartley amendments added to Section 10(c), a proviso which appears to have been designed to delineate some conduct for which an employer might effectively discharge his employees, by providing that an employee cannot be reinstated who was discharged "for cause." The legislative history of the later enacted Section 10(c) proviso would seem to indicate that "cause" was meant to include many acts of strike misconduct, such as activities proscribed by Section 8(b) and in conduct violating state and federal penal statutes. 83/ Both the Board and courts, it would appear, engage in a discretionary balancing process by weighing, on the one hand, whether or not reinstatement would effectuate the policies of the Act as against the rights of employees to engage in union activities under Section 7 of the Act. 84/ Two cases have attempted to evaluate and establish guidelines which will aid the trier of the facts in determining what conduct will or will not be found to be sufficient cause for an employer to bar an employee from reinstatement.

In the first of these cases, N.L.R.B. v. Thayer Co., 85/ the Court of Appeals for the First Circuit was asked to enforce a reinstatement order for numerous employees who, during the course of an unfair labor practice strike, had participated in "coercive" activities which the Board had nonetheless characterized as protected, in accord with the Republic analysis. 86/ The Board found that none of the conduct with which it dealt "involved actual restraint, violence, or coercion, or conduct which exceeded the animal exuberance and mutual harassment characteristic of such strike situations." 87/ Accordingly, the Board held that the company committed an unfair labor practice by discharging seventeen employees for union activities. This action provoked a strike which

82/ Republic Steel Corp. v. N.L.R.B., 107 F.2d 472 at 479 (C.A. 3), modified on other grounds 311 U.S. 7 (1940). See Victor Products Corp. v. N.L.R.B., 208 F.2d 834 (C.A.D.C.); Socony Vacuum Oil Company, Inc., 78 NLRB 1185; Standard Oil Co., 91 NLRB 783; N.L.R.B. v. Cambria Clay Products Co., 215 F.2d 48 (C.A. 6); Dalton Telephone Co., 82 NLRB 1001, 1003; N.L.R.B. v. Mt. Clemens Pottery Co., 147 F.2d 262 (C.A. 6).

83/ See Cox, Some Aspects of the LMRA, 1947, 61 Harvard Law Review 1, 20-22; Vol. 1 Legislative History, LMRA-69, 101, 176, 228, 318, 333, 434, 537, 542, 558, 563, 882, 905, 912, 917 (1948); Vol. 2 Legislative History, 1572, 1555, 1593-1595, and 93 Congressional Record 6518. See N.L.R.B. v. Dixie Shirt Co., 176 F.2d 969, 974 (C.A. 4); Kohler Co. v. Local 833, 300 F.2d 699, 705 (C.A.D.C.), cert. denied 370 U.S. 911.

84/ Local 833 v. N.L.R.B., 300 F.2d 699 (C.A.D.C.). N.L.R.B. v. Thayer Co., 213 F.2d 748 (C.A. 1). Cf. N.L.R.B. v. Local No. 1229, Electrical Workers, 346 U.S. 464; N.L.R.B. v. Washington Aluminum Co., 370 U.S. 9, where the Supreme Court noted that "It is of course true that Section 7 does not protect all concerted activities. . . ."

85/ 213 F.2d 748 (C.A. 1), cert. denied 348 U.S. 883.

86/ 107 F.2d 472 (C.A. 3), modified on other grounds, 311 U.S. 7.

87/ H. N. Thayer Co., 99 NLRB 1122, 1133.

was broken by a state court injunction issued on the ground that the picketing was being conducted in an illegal manner. The company resisted demands that it reinstate some eighty-six strikers. It contended that their participation in illegal picketing was not activity "protected" by Section 7 of the Act. The Board found that the strike and picketing were "protected" activities and ordered reinstatement.

- 31 - On petition for enforcement in the Court of Appeals, reinstatement was ordered as to most of the strikers. The court said that those employees who had engaged only in protected activities must be reinstated. The strike activity of the remaining employees was held not to be protected, but the court said the Board might order their reinstatement too, if it should find reinstatement would effectuate the policies of the Act and that the unprotected activity did not constitute "cause" for discharge within the meaning of Section 10(c). The court remanded the case to the Board to make the primary administrative determination whether the unprotected activity was cause for discharge and, if not, whether reinstatement would be an appropriate remedy. The court rejected this "protected-unprotected" dichotomy as unnecessary and inappropriate where coercive strike activities were involved, and stated "The actual questions in this case are whether under the circumstances the strike conduct was cause for discharge, and if not, whether reinstatement would effectuate the policies of the Act." ^{88/} Although the court thus recognized the two questions posed by the addition of the Section 10(c) proviso to the Act, it characterized cause as depending upon the context of the given case rather than specific acts of misconduct per se. ^{89/}

With regard to the application of Section 10(c), the Thayer case has threefold significance. The court stated that (1) reinstatement of employees who have engaged in unprotected activities may, in some instances, "effectuate the policies of the Act"; ^{90/} (2) participation in a protected activity cannot be "cause" for discharge; ^{91/} and (3) participation in an unprotected activity is not necessarily cause for discharge. ^{92/}

In affirming reinstatement of those employees who had participated only in protected activities, the court as noted above, stated that participation in a protected activity cannot be cause for discharge. This statement appears inconsistent with one made by the Supreme Court in N.L.R.B. v. Local No. 1229, IBEW, where the Court seems to say that certain types of activity might constitute cause for discharge even though it is protected by Section 7. ^{93/}

^{88/} 213 F.2d at 754.

^{89/} 213 F.2d at 753, footnote 6.

^{90/} 213 F.2d 748.

^{91/} Id. at 755, footnote 13.

^{92/} Id. at 753.

^{93/} Employees of a television station were fired for distributing handbills demeaning the quality of the station's programs. The Board and the Court of Appeals disagreed as to whether a concerted activity had to be "unlawful" or merely "indefensible" to be beyond the purview of Section 7 of the Act. Jefferson Standard Broadcasting Co., 94 NLRB 1507, enf. denied, 202 F.2d 186,

The Board in Thayer, on remand, held that reinstatement of employees who had engaged in coercive activities could not effectuate the policies of the Act. The Board reaffirmed its original "protected-unprotected" analysis, transferring these strikers to the latter category on the basis of the court-imposed finding that misconduct can never be protected activity. 94/ It would seem, therefore, that the court's definition of the limits of an employer's discharge power is to be determined on the particular facts in each case. 95/

- 32 - The second case which establishes guidelines to aid the trier of the facts in determining what conduct will bar reinstatement is the Kohler decision of the Court of Appeals for the District of Columbia 96/ which followed the Thayer approach of resolving reinstatement issues. The Board had denied reinstatement to the 90 workers that Kohler had specifically discharged for misconduct. Some of the 90 had not participated to any greater degree than 1,700 other strikers in the acts of violence committed during the course of the long strike. 97/ The Board found that the presence of a great number of pickets had resulted in a coercive effect which was as serious as active violence, 98/ and thus barred employees from reinstatement.

The court, however, rejected any such basis of disqualification for strike misconduct viewed out of the context of employer provocations and unfair labor practices, and remanded the reinstatement issue for reconsideration in terms of the Thayer doctrine which declares that the seriousness of the employer's unlawful acts and the seriousness of the employee's acts must be balanced in determining whether reinstatement would effectuate the purposes of the Act. 99/

In discussing the Thayer doctrine, the court in Kohler did not elaborate on the meaning of "for cause" in Section 10(c) as a statutory bar to reinstatement, but merely stated that the issue was not raised before the Board and, since it is a determination within the special competence of the Board, it could not be treated upon appeal. 100/ The court did, however, suggest some criteria for determining when Section 10(c) precludes reinstatement of employees discharged "for cause," such as "the employer's unfair

reversed 346 U.S. 464. The Supreme Court did not discuss the Board and Appeals Court disagreement but stated at page 477 that the employees disparaging their employer's TV programs deprived them of the protection of Section 7 because of their "disloyalty."

94/ R. N. Thayer Co., 115 NLRB 1591, 1596 (1956).

95/ See N.L.R.B. v. Puerto Rico Rapon Mills, Inc., 293 F.2d 941 (C.A. 1); N.L.R.B. v. Efco Manufacturing, Inc., 227 F.2d 675 (C.A. 1), cert. denied 350 U.S. 1007 (1956). But see N.L.R.B. v. Wallick, 198 F.2d 477 (C.A. 3).

96/ Kohler Co., 128 NLRB 1062, 1194, enf. denied, Local 833, UAW-AFL-CIO, Etc. v. N.L.R.B., 300 F.2d 699 (C.A.D.C.), cert. denied 370 U.S. 911

97/ A summary of the facts appears at 128 NLRB 1145-1240.

98/ 128 NLRB 1103-08.

99/ 300 F.2d at 702-04.

100/ 300 F.2d at 705. See the Board's decision, 128 NLRB at page 1105.

labor practices, each employee's job history, and the relationship between the acts of misconduct and fitness for continued service." 101/

In applying the various indicia established by the decisions discussed above, and synthesizing their holdings, it would appear that in determining whether the employee's conduct is so aggravated as to bar reinstatement, the following factors should be weighed in reaching a judgment:

(1) The employer's provocation, if any, in the context of reinstatement having as its primary purpose the prevention of discriminatory discharges for union activities;

(2) The post-reinstatement job contact between the employee and employer;

(3) Whether reinstatement would exacerbate the future employment relationship so as to result in decreased business efficiency or serious maladjustments to the employer's work force and its relations with its employees;

(4) Whether the employee's conduct is so unlawful that his continued employment by reinstatement should not be forced on the employer because the nature of the discharge's misconduct renders harmonious employer-employee relations improbable; and

(5) Whether the employee's conduct was so flagrant as to render him unfit for further employment so that it would not only be unreasonable to require his reinstatement but it would also not "effectuate the policies of the Act" nor "preserve industrial peace." 101a/

In applying this test, a caveat of the Thayer case should be kept in mind, namely, that certain activity may be unprotected by Section 7 without being "cause" for discharge in the light of all the circumstances. 102/ Such a rule is a necessary corollary of the proposition that the Board may order reinstatement of employees discharged for participation in unprotected activities. The same considerations that lead to the conclusion that at times the policies of the Act may be effectuated by reinstating employees discharged for unprotected activities also require that not every unprotected activity should be cause for discharge. 103/

101/ 300 F.2d at 705.

101a/ Fibreboard Corp. v. N.L.R.B., 379 U.S. 203, 210: "One of the primary purposes of the Act is to promote the peaceful settlement of industrial disputes by subjecting labor-management controversies to the mediatory influence of negotiation."

102/ N.L.R.B. v. Thayer Co., 213 F.2d 748, 753 (C.A. 1). See also page 32, footnote 101, supra.

103/ Id. at 755-757. Cf. N.L.R.B. v. Local No. 1229, IBEW, 346 U.S. 464 at 480.

It might be argued that "cause" as used in Section 10(c) is a concept not concrete but abstract which is to be applied empirically and pragmatically and the definition of which is left to the discretion of the Board without any settled criteria. The merit of this interpretation (which accounts for the difficulty encountered in attempting to frame any general principles with respect to reinstatement situations), is that it enables the trier of the facts to weigh the seriousness of employee misconduct against the amount of employer misconduct in each case in which reinstatement is requested. ^{104/} This subjective approach would explain the lack of definiteness present in some decisions with respect to what conduct by striking employees in any given situation will be found to be "cause" barring reinstatement and perhaps affords the Board and courts a ratio decidendi for those cases where reinstatement has been ordered for an employee whose conduct does not fall within the protection of Section 7. ^{105/}

Conclusions

The nature of Arca's and Beck's conduct has been described above in detail. The seriousness of their violent and unprotected activities is such that when weighed against the amount of the employer's provocation, it is believed and found that it would better effectuate the purposes of the Act to penalize unprovoked violence by not requiring their reinstatement and thus foster industrial peace and harmony by strengthening the deterrents upon violence by employees. ^{106/} As for Olson, who threw a small, harmless - 34 - plastic vial of paint and missed the target, it has been held in similar situations that where an employee fired missiles at automobiles that it was not sufficient grounds for denying reinstatement. ^{107/} Accordingly, there is insufficient cause to deny Olson reinstatement and backpay.

Regardless of how Arca's and Beck's unprotected activities are analyzed, evaluated, weighed, and balanced in the context of the Respondent Employer's nonprovoking conduct and the purposes and policies of the Act, the fact remains that reinstating them would be the equivalent of not only ignoring but condoning their unjustifiable violence. To do this, despite the unaggravating nature of the Company's conduct and the technical nature of its unfair labor practice, would be the same as placing a premium on resort to force instead of pursuing available legal remedies and thus subvert the principles of law and order which lie at the foundation of society. To reinstate Arca and Beck, in the face of the prohibition of Section 10(c) and

^{104/} N.L.R.B. v. Thayer Co., 213 F.2d 748 at 753.

^{105/} The legislative history of Section 10(c) indicates the "cause" provision was not intended "to change the existing law" 93 Congressional Record 6518-19. See Cox, The Right to Engage in Concerted Activities, 26 Indiana Law Journal 319, 324, footnote 24.

^{106/} See Section 1 of the Act "Declaration of Policy."

^{107/} Kansas Milling Co. v. N.L.R.B., 185 F.2d 413 (C.A. 10) modifying 86 NLRB 925; Horn Manufacturing Company, Inc., 83 NLRB 1177, 1179 (reinstatement ordered).

despite their violent and unlawful conduct, which was one-sided on their part, would be akin to according them the same relief to which they would have been eligible if they had engaged in activities protected by Section 7 of the Act and thus place a premium on force. 108/

The premium in this case then, would be approval of their illegal acts at no risk to their jobs which would be contrary to the explicit Congressional mandate in Section 10(c) that: "No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any backpay, if such individual was suspended or discharged for cause." It is recommended, therefore, that Arca and Beck be refused reinstatement and any backpay. 109/

Fred C. Johnson

Fred C. Johnson, who worked for Fibreboard for 23 years as a machinist, was terminated on July 31, 1959, when the maintenance work was contracted to an independent contractor. After he was terminated, he was employed by a "trailer outfit" (the name of which he does not recall) from November 1959 to approximately February 1, 1960, as a machinist. It appears he did not work thereafter in the Bay Area. He sold his home and moved on May 1, 1960, from Oakland, California, to South Lake Tahoe, California, a resort area, which is 180 miles from Oakland. He built a home at Lake Tahoe, moved into it on July 1, 1960, and went into the real estate business, building, buying and selling homes. Since he moved his residence to Lake Tahoe on May 1, 1960, which has no industrial plants, he has worked at a motel 110/ and at Vernon Cox Speciality Sales, a boat shop at \$2 per hour repairing motor boats. These jobs were for a short duration and were performed in addition to Johnson's real estate business. The Respondent Company reinstated him to his former job about March 12, 1965, but Johnson quit two weeks later, on April 2, 1965, and returned to his home at Lake Tahoe. Since the early part of 1966, he has been promoting a private club, called Valhalla at Lake Tahoe, "selling memberships." He is part owner of the 9 acres of land on which this club is to be constructed.

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The Respondent Employer claims that Johnson is not entitled to any backpay because he failed to exercise due diligence in seeking other work by deliberately causing his gross back wages to accumulate during the backpay period September 14, 1962, to January 18, 1965.

Discussion

A backpay order is a reparation order designed to vindicate the public policy of the statute 111/ and its purpose is to "make

108/ N.L.R.B. v. Fansteel Metallurgical Corp., 306 U.S. 240, 253, 59 Sup. Ct. at 495.

109/ Oneita Knitting Mills, Inc. v. N.L.R.B., 375 F.2d 385 (C.A. 4).

110/ Johnson relieved the owner of this motel whenever he had to be away from his place of business.

111/ Nathanson v. N.L.R.B., 344 U.S. 25 at 27.

whole" the employee for losses which he suffered as a result of an unfair labor practice. 112/ The discriminatee is entitled to ". . . a sum of money equal to that which [he] would normally have earned as wages during the period from the date of his discharge to the date of . . . offer of reinstatement, . . . less the amount earned subsequent to discharge" 113/ Of course, where an economic shutdown occurs, backpay does not normally accrue; 114/ nor are dischargees who do not normally make a reasonable search for work entitled to backpay 115/ and discriminatees who have withdrawn from the labor market because of disability or for other reasons, do not receive backpay for such periods of disability. 116/ Due diligence in seeking work requires an "honest good-faith effort." 117/ Only actual losses of earnings must be made good. Accordingly, deductions must be made from gross backpay not only for actual interim earnings by the worker for whom backpay is claimed but also for losses which are willfully incurred. 118/ It is thus required to take into account the general considerations applicable to mitigation of damages. 119/

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The burden of proof that Johnson did not sufficiently mitigate his losses and "facts which would negative the existence of liability or which would mitigate the liability," 120/ rests on Respondent - both because it was the original wrongdoer and because

112/ See Phelps Dodge Corp. v. N.L.R.B., 313 U.S. 177, 197. In Waycross Sportswear, Inc., 170 NLRB No. 139, the Board refused to adopt the Trial Examiner's recommendation in an 8(a)(5) violation that the Respondent should make the employees "whole, insofar as practicable, for the monetary value of benefits, if any, which it may be shown Respondent's employees would reasonably have been expected to receive in the past but for Respondent's unlawful refusal to bargain."

113/ Pennsylvania Greyhound Lines, Inc., 1 NLRB 1, affd. 303 U.S. 261; Savoy Laundry, Inc., 148 NLRB 38.

114/ Central Minerals Co., 59 NLRB 757; Satchwell Electric Construction Co., 128 NLRB 1265, 1279.

115/ Phelps Dodge Corp., 313 U.S. 177. See Mooreville Cotton Mills v. N.L.R.B., 110 F.2d 179 (C.A. 4), where it was held dischargee may reject interim employment offered at locations distant from his home.

116/ Columbia Pictures Corp., 82 NLRB 568; Konman-Woracek Shoe Mfg. Co., 66 NLRB 789, enfd. 158 F.2d 103 (C.A. 8). See American Manufacturing Company, 167 NLRB No. 71, where it was held that a discriminatee injured in the course of interim employment he was forced to seek because of an 8(a)(3) discharge, was entitled to backpay for a period of disability. As to what conduct on a picket line bars backpay, see page 29, supra. Cf. Elmira Machine and Specialty Works, Inc., 148 NLRB 1695, 1699, particularly footnote 3.

117/ N.L.R.B. v. Cashman Auto Co., 223 F.2d 832, 836 (C.A. 1).

118/ Phelps Dodge Corp., supra, at 198.

119/ N.L.R.B. v. Seven-Up Bottling Co., 344 U.S. 344 at 346.

120/ See U.S. Air Conditioning Corp., 141 NLRB 1278, 1280.

the issue is one of affirmative defense. ^{121/} The employer has the burden of establishing affirmative defenses which would mitigate his liability, including the defense of willful loss of earnings. ^{122/} The Board in New England Tank Industries, Inc., 147 NLRB 598, stated at page 601: ". . . while the general burden of proof is on the General Counsel to establish for each discriminatee the loss of pay which has resulted from Respondent's established discriminatory conduct, i.e., the gross backpay over the backpay period, the burden of proof is on Respondent to show diminution of that amount, whether such diminution results from the claimants' willful loss of earnings, or from the unavailability of a job at Respondent's operation for some reason unconnected with the discrimination."

As the "finding of an unfair labor practice . . . is presumptive proof that some backpay is owed," ^{123/} the General Counsel's burden is limited to showing "what would not have been taken from [the employees] if the Company had not contravened the Act." ^{124/} This allocation of the burden is aptly expressed as follows: ". . . in a back pay proceeding the burden is upon the General Counsel to show the gross amounts of back pay due. When that has been done, however, the burden is upon the employer to establish facts which would negative the existence of liability to a given employee or which would mitigate that liability." ^{125/}

"Making the workers whole for losses suffered on account of an unfair labor practice is part of the vindication of the public policy which the Board enforces" ^{126/} and a Board backpay order, the Supreme Court has stated, "should stand unless it can be shown that it is a patent attempt to achieve ends other than those which can fairly be said to effectuate the policies of the Act." ^{127/}

The Board has adopted the common-law "loss of earnings" rule, under which the measure of the employee's recovery is the earnings which he has lost, less any other earnings which he has

^{121/} See 134 A.L.R. 243, 257-270; Phelps Dodge Corp. v. N.L.R.B., 313 U.S. 177, 199-200; N.L.R.B. v. Miami Coca-Cola Co., 360 F.2d 569, 575 (C.A. 5); Mabors v. N.L.R.B., 323 F.2d 686 (C.A. 5); N.L.R.B. v. Brown & Root, Inc., 311 F.2d 447, 454 (C.A. 8); Fisher Construction Co. v. Lerche, 232 F.2d 508, 509 (C.A. 9); N.L.R.B. v. Boswell Co., 134 F.2d 585, 597 (C.A. 9); Mastro Plastics, 136 NLRB 1342, 1346; Southern Silk Mills, Inc., 116 NLRB 769; Ozark Hardwood Co., 119 NLRB 1130, 1135; Williston on Contracts, Sec. 1360.

^{122/} N.L.R.B. v. Mooney Aircraft, Inc., 366 F.2d 809, 813 (C.A. 5); N.L.R.B. v. Brown & Root, Inc., 311 F.2d 447, 454 (C.A. 8).

^{123/} N.L.R.B. v. Mastro Plastics Corp., 354 F.2d 170, 175, 178 (C.A. 2), cert. denied 384 U.S. 972.

^{124/} Virginia Electric & Power Co. v. N.L.R.B., 319 U.S. 533, 544.

^{125/} N.L.R.B. v. Brown & Root, Inc., 311 F.2d 447, 454 (C.A. 8).

^{126/} Phelps Dodge Corp. v. N.L.R.B., 313 U.S. 177, 197.

^{127/} N.L.R.B. v. Seven-Up Bottling Co., 344 U.S. 344, 346, 347. See M.F.A. Milling Co., 170 NLRB No. 111, where employer refused to bargain and was ordered to pay members of union's negotiation committee for wages lost while attending past negotiating sessions.

- 37 - lost, less any other earnings which he obtained or willfully refused to obtain. 128/ However, payments do not constitute "earnings" unless awarded for services rendered. 129/ Union strike benefits, money received from a union for picketing, insurance payments or other collateral benefits are not considered earnings. 130/

The Supreme Court has also recognized that "The computation of the amount due may not be a simple matter . . . Congress made the relation of remedy to policy an administrative matter, subject to limited judicial review, and chose the Board as its agent for the purpose." 131/ The Supreme Court has likewise spoken with respect to the quantum of proof necessary to sustain an award of damages, holding that "there is a clear distinction between the measure of proof necessary to establish the fact that [a party] sustained some damage and the measure of proof necessary to enable [a tribunal] to fix the amount." 132/ "Certainty in the fact of damage is essential. Certainty as to the amount goes no further than to require a basis for a reasoned conclusion." 133/ As close approximation as the circumstances permit. 134/ "The wrongdoer is not entitled to complain that [the amount of damage] cannot be measured with the exactness and precision that would be possible if the case, which he alone is responsible for making, were otherwise." 135/ In determining the amount of backpay due, approximation of the loss by reasonable methods is sufficient. 136/ The Board may adopt formulas reasonably designed to produce such approximations provided the method selected is neither arbitrary nor unreasonable in the circumstances involved. 137/

- 128/ N.L.R.B. v. Marshall Field & Co., 129 F.2d 169 (C.A. 7), affd. 318 U.S. 253; National Casket Co., 1 NLRB 963, 975-976.
- 129/ N.L.R.B. v. Brashear Freight Lines, Inc., 127 F.2d 198, 199-200 (C.A. 8).
- 130/ Rice Lake Creamery Co., 151 NLRB 1113, affd. in part, 62 LRRM 2332 (C.A.D.C.); Standard Printing Company of Canton, 151 NLRB 963, 966; Gullett Gin Co., Inc. v. N.L.R.B., 340 U.S. 361; Eichel v. New York Central Railroad Co., 375 U.S. 253; N.L.R.B. v. Melrose Processing Co., 351 F.2d 693, 701 (C.A. 8). Cf. N.L.R.B. v. Moss Planing Mill Co., 224 F.2d 702 (C.A. 4) where the court held workmen's compensation payments to be earnings for backpay purposes. See American Manufacturing Company, 167 NLRB No. 71, with respect to workmen's compensation awards, tolling of backpay period particularly in cases of industrial accidents during the interim period.
- 131/ Nathanson v. N.L.R.B., 344 U.S. 25, 29-30.
- 132/ Storv Parchment Paper Co. v. Paterson Parchment Paper Co., 282 U.S. 555, 562-563. See Merchandise Press, Inc., 115 NLRB 1441.
- 133/ N.L.R.B. v. Kartarik, Inc., 227 F.2d 190, 193 (C.A. 8).
- 134/ Marlin-Rockwell Corp. v. N.L.R.B., 133 F.2d 258, 260 (C.A. 2).
- 135/ Storv Parchment Paper Co. v. Paterson Parchment Paper Co., supra; East Texas Steel Castings Company, Inc., 116 NLRB 1336.
- 136/ Flora and Argus Construction Co., 149 NLRB 583 at page 586.
- 137/ N.L.R.B. v. Brown & Root, Inc., 311 F.2d 447, 453 (C.A. 8). Accord: N.L.R.B. v. Local 138, Operating Engineers, ___ F.2d ___ (C.A. 2), 65 LRRM 2938. Cf. N.L.R.B. v. Deena Artware, Inc., 223 F.2d 871, 872 (C.A. 6).

However, any uncertainty is resolved against the wrongdoer whose conduct made certainty impossible. 138/

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The Courts of Appeals have recognized that these holdings are applicable in Labor Board backpay cases. In one case 139/ where the court, after quoting from the above Supreme Court cases, stated:

The principles are, of course, intended to permit a solution of the problem of amount to be made upon any range of facts, circumstances, or reasonable inferences, which afford a rational basis for a conclusion. 140/

Accordingly, the Board has the power to order "such affirmative action including reinstatement of employees with or without backpay" as will effectuate the purposes of the Act, 141/ and it is authorized to effect "a restoration of the situation, as nearly as possible, to that which would have obtained but for the illegal discrimination." 142/ Thus, in fashioning any remedy, it is necessary that the nature of the unfair labor practice be looked to and the facts upon which it is premised. This is particularly so in this case as the Respondent's conduct was minimal in its execution, devoid of union animus and concededly economic in its motivation.

Conclusions

In applying these principles to the facts in this proceeding, it is concluded and found that Johnson did not make diligent and reasonable efforts to secure interim work after his termination. The record is conclusive that as early as 1956, Johnson had intended to retire eventually to Lake Tahoe as evidenced by his own testimony that he had bought a lot there three years before he built his home at the lake. He testified, "That was one place I always intended to retire to . . . when I was through because I liked it up there" When his job suddenly terminated on July 31, 1959, it accelerated the date for his expected retirement, as indicated by the fact that eight months later Johnson sold his home in Oakland and moved to Lake Tahoe where he built a home on a lot he had purchased three years earlier admittedly in anticipation of the time when he would retire.

138/ N.L.R.B. v. Miami Coca-Cola Co., 360 F.2d 569-573 (C.A. 5); N.L.R.B. v. District Council of Painters, No. 52, Etc., 363 F.2d 204, 205 (C.A. 9).

139/ See N.L.R.B. v. Kartarik, Inc., 227 F.2d 190, 192-193 (C.A. 8).

140/ See also Marlin-Rockwell Corp. v. N.L.R.B., 133 F.2d 258, 260-261 (C.A. 2); F. W. Woolworth Co. v. N.L.R.B., 121 F.2d 658, 663 (C.A. 2); N.L.R.B. v. Denna Artware, Inc., 228 F.2d 871 (C.A. 6); N.L.R.B. v. Cashman Auto Co., 223 F.2d 832, 836 (C.A. 1).

141/ Section 10(c) of the Act.

142/ Phelps Dodge Corp. v. N.L.R.B., 313 U.S. 177, 194.

Johnson was in the enviable and commendable position of having accumulated by dint of hard work, frugality and wise investments, a sizeable competence, sufficient without excess, to pay him an income on his own investments of \$4,448 for the year 1961; and \$4,306 for 1962 and approximately the same income for both 1963 and 1964. With this modest nest egg supplemented by social security payments which were in the offing, and an inchoate pension from the Respondent Company, payable as of September 22, 1967, as well as his various business ventures, he was in the happy situation of being able to enjoy the delightful prospect of not being obliged to resort to seeking diligently any other work. This reasonable inference of lack of motivation and diligence in seeking work, it would appear, is evidenced by the following indicia: his half-hearted and lackadaisical efforts to obtain work in the Bay Area; moving eight months after his discharge from Oakland to Lake Tahoe where he had purchased a lot in 1956 in anticipation of building a home on it when he retired, and his few jobs and sporadic periods of employment by others (as contrasted with his self-employment) both at Lake Tahoe and the Bay Area from 1959 to 1965. He thereby removed himself from the labor market. See Rutter-Rex, 158 NLRB 1414, 1420.

Corroborative of this conclusion is his acceptance in March 1965, of Respondent's offer of reinstatement and then almost immediately quitting his job two weeks later; his damaging admission that he returned to his job only because the Union importuned him to do so in connection with this matter of backpay and that his acceptance of reinstatement was only pro forma because he wanted to return to his home at Lake Tahoe where he preferred to live and where he had a job awaiting him on April 1, 1965.

Johnson's testimony with respect to registering with the State employment agency and his Union, Local 1304, in an effort to obtain work, impressed the trier of these facts as being a sham and not done sincerely but rather an automatic going through the motions in order to be eligible for unemployment compensation. From 1962 to 1964, inclusive, he made the 360 miles round trip from Lake Tahoe to Oakland three to six times each year. He acknowledged he came to visit relatives in the Bay Area and that on some of these occasions he did not call at the union hall to ascertain if work was available. 143/

His testimony with respect to the efforts he made to obtain work is inconsistent, self-contradictory, unspecific and vague. For example, when he testified with respect to companies and what employment agencies, both public and private, he made applications with for work, he mentioned no names, dates or specifics. 144/ His testimony at times was incoherent,

143/ At another point in his testimony, he inconsistently testified that when he came to the Bay Area from his Lake Tahoe home, "I always went down to see Mr. Ferber down at the Union."

144/ The only exception was his applying for jobs with the American Machinery and Foundry Company and American Can Company but no dates or other details were given in his testimony.

unimpressive, and it is believed purposefully vague and obscure. 145/ Many of Johnson's self-serving statements and much of his unimpressive and incredible testimony which was a maze of confusion, equivocations, improbabilities and inability to recall details were given in reply to leading and suggestive questions when he was under examination by the General Counsel's representative which detracts from the weight to be given his testimony. 146/ Little probative value has been given to the testimony thus elicited as the vice in counsel asking Johnson leading questions is that they suggest the desired answers which the witness will often merely adopt. 147/ Liberty Coach Co., Inc., 128 NLRB 160.

In appraising the diligence of Johnson's efforts to obtain employment, there is, of course, no requirement that his search meet with "success: it only requires an honest good faith effort." 148/ What constitutes such a good faith effort is "impossible to define sharply," 149/ as the answer necessarily depends upon the circumstances of each particular case. 150/ In broad terms, however, it would seem that a good faith effort is best manifested not by a mechanically artificial effort to give the false impression of seeking work but rather by the sincere and reasonable efforts of an individual in his circumstances to relieve his unemployment. It requires conduct consistent with an inclination to work and to be self-supporting, as well as the economic climate in which the individual operates, his skill and qualifications, or lack, his age and his personal limitations and handicaps. It is in the context of the foregoing that it is determined in each case whether the employee made a sincere and reasonable effort to mitigate the loss of earnings flowing from his discharge.

Considering all the evidence and circumstances detailed above, the demeanor of Johnson while testifying, and applying the principles enunciated above to the facts of the case, it is concluded and found that Johnson did not engage in a diligent and continuous effort to find gainful employment during the back-pay period, but, on the contrary failed to make a reasonable search

145/ He testified as follows: "I mostly went to the can companies and people that had a lot of machinery that needed repairing. In fact, I would look at the telephone book in the morning and I would make a check in the industrial plants, and that day I would go see two or three of them and the next day I would go do the same thing."

146/ Although Johnson was first examined by Respondent's counsel, his testimony reveals that although he may not have been "hostile," neither was he in a realistic sense Respondent's witness as manifested by his compliant and accommodating answers to the General Counsel's leading questions on "cross-examination."

147/ The following is an example of Johnson's examination by General Counsel:

Q. Now, before you moved up to the Tahoe area, Mr. Johnson, do you feel you had exhausted the job possibilities in the Bay Area?

* * * *

A. I did.

to find other work and thereby incurred a willful loss of earnings. Accordingly, Fred C. Johnson is not entitled to backpay.

Deductions of Pension Benefits

When the employees were terminated, Bennett, Capps, Crispino, Fuller, Gronberg, Hamidy, Hughes, E. T. Johnson, J. P. Johnson, Lowell Nash, and Smith elected to take early retirement and thereafter were paid monthly retirement benefits. Some of these men would have been entitled to jobs during the backpay period. Since their action was voluntary and there was no misrepresentation when they made their election, the amounts paid as early retirement benefits have been deducted from the backpay owing them resulting, in some instances, of overpayments. See Appendix A attached to this decision and Section 20 of the Retirement Plan (Respondent's Exhibit 6).

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Resume

1. The hourly wage rates paid Respondent's ILWU millwrights during the backpay period from September 14, 1962, to January 18, 1965, are to be applied in computing what the terminated maintenance machinists are to receive in gross backpay. The rates paid the ILWU millwrights by Fibreboard were as follows:

June 1, 1962	-	\$3.695
June 1, 1963	-	3.795
June 1, 1964	-	3.895
June 1, 1965	-	3.985

2. There are 21 bargaining unit machinists jobs available.. 151/

3. Respondent is to be credited with severance allowances against backpay.

4. Respondent is entitled to be credited with amounts paid as early retirement benefits and for retirement plan deposits owing for the backpay period, for those electing reinstatement.

5. The compulsory retirement of employees Gronberg, Holmes, J. P. Johnson, Capps, Crispino, Hamidy, and Bennett fell on the dates specified at page 23:

148/ N.L.R.B. v. Cashman Auto Co., 223 F.2d 832, 836 (C.A. 1).

149/ Guidice v. Board of Review, 14 N.J. Super. 335, 82 Atl. 2d, 206, 207

150/ See Mooreville Cotton Mills v. N.L.R.B., 110 F.2d 179, 181 (C.A. 4); United Protective Workers v. Ford Motor Co., 223 F.2d 49, 52 (C.A. 7).

151/ The following accepted reinstatement: Bradford, Homen, Lippert, Longnecker, Price, Raineri, Reihl, Swisher, Weismiller, Novacek, and Cruze who retired on October 1, 1965.

6. F. C. Johnson is not entitled to backpay because he failed to make diligent efforts to obtain equivalent employment during the backpay period.

7. The terminated employees are not entitled to any benefits during the hiatus period (August 1, 1959 - September 14, 1962) except for computing the date on which they will be eligible to retire.

8. The misconduct of Arca and Beck bars them from reinstatement and backpay but not Olson.

RECOMMENDED ORDER

On the basis of the foregoing, it is recommended that Fibreboard Paper Products Corporation, its officers, agents, and successors and assigns pay to each of the twenty-one individuals listed below, in order of their seniority, the sum of money listed opposite his name, plus interest, less deduction required by State and Federal laws:

Machinists

* L. J. Nash	See Appendix A, page i
W. Jackson	\$ 3,912.23
D. Wittorff	4,230.45
M. Crispino	4,691.74
R. Hamidy	\$ 2,227.65
J. Cruze	5,783.16
E. Schlotterbeck	5,382.46
* F. Bennett	See Appendix A, page ii
M. Schoenfeld	\$ 1,867.06
G. Goranson	767.95
R. Jensen	12,982.30
J. Longnecker	4,142.79
H. Bradford	3,733.05
A. Fusare	4,916.71
J. Price	17,466.44
H. Cunningham	7,869.55
L. Raineri	14,974.66
W. Reihl	764.20
V. O'Leary	3,555.73
C. Fontes	None (See Appendix A, page iv)
D. Lippert	1,379.68

Power House Engineers

* F. Lowell	See Appendix A, page iv
R. Hughes	\$13,363.09
H. F. Haueter	6,373.30
E. Johnson	13,214.92
G. Novacek	3,492.07
J. Griffin	1,837.79

Power House Firemen

C. W. Olson	\$10,042.61
E. Mann	5,117.06
J. Van Zoen	1,586.98
J. Wall	3,034.38
	<u>\$158,710.01</u>

* These discharges who elected to take early retirement received pension benefits in excess of the backpay owing them. See Appendix A.

Dated:

Henry S. Sahn
Henry S. Sahn
Trial Examiner

APPENDIX A

Backpay period - September 14, 1962 to January 18, 1965
 Gross backpay - See Schedule 3 of Answer
 Net interim earnings - See Schedule 4 of Answer
 Medical expenses - See Schedule 4 of Answer
 Severance allowance and early retirement benefits - See Schedule 5 of Answer
 Average quarterly earnings during base period - See Schedule 1 of Answer
 Net quarterly backpay includes medical expenses in most instances

MachinistsL. J. NASH

Compulsory retirement date March 1, 1964

Gross backpay	\$ 11,982.28
Less Net interim earnings	\$ 11,409.95
Total Net quarterly backpay	\$ 619.30
Plus Total medical expense	\$ 220.23
Net backpay	\$ 839.53
Less Severance allowance	\$ 776.00
Less early retirement benefits paid	\$ 3,432.55
Overpayment	\$ 3,366.47

WARREN C. JACKSON

Gross backpay	\$ 22,241.75
Less Net interim earnings	\$ 17,751.17
Net quarterly backpay	\$ 4,617.23
Less Severance allowance	\$ 705.00
Net backpay	\$ 3,912.23

DETLIF C. WITTORFF

Compulsory retirement date April 1, 1963

Gross backpay	\$ 4,675.65
Interim earnings	none
Net quarterly backpay	\$ 4,675.65
Plus medical expenses	\$ 118.80
	\$ 4,794.45
Less Severance Pay	\$ 564.00
Net backpay	\$ 4,230.45

M. CRISPINO

Disabled until retirement on October 1, 1962

Gross backpay	\$ 225.60
Medical expenses	\$ 3.95
Severance allowance	\$ 705.00
Interim earnings	none
Early retirement benefits paid	\$ 4,216.29
Overpayment	\$ 4,691.74

ROBERT HAMIDY

Compulsory retirement date December 1, 1962

Gross backpay	\$ 1,656.50
Medical expenses	\$ 47.25
Severance allowance	\$ 705.00
Interim earnings	none
Early retirement benefits paid	\$ 3,226.40
Overpayment	\$ 2,227.65

JOSEPH S. CRUZE

Disabled until April 15, 1963 - Retired October 1, 1965

Gross backpay	\$ 17,795.62
Less Net interim earnings	\$ 10,285.44
Medical expenses	\$ 297.70
Net backpay	\$ 5,783.16

E. SCHLOTTERBECK

Gross backpay	\$ 23,160.84
Less Net interim earnings	\$ 17,176.48
Net quarterly backpay	\$ 5,984.36
Medical expenses	\$ 18.90
Severance pay	\$ 620.80
Net backpay	\$ 5,382.46

F. BENNETT

Compulsory retirement date December 1, 1962

Gross backpay	\$ 155.60
Interim earnings	none
Net quarterly backpay	\$ 155.60
Medical expenses	\$ 22.97
Early retirement benefits paid	\$ 3,114.00
Severance allowance	\$ 705.00
Overpayment	\$ 3,640.43

M. SCHOENFELD

Gross backpay	\$ 18,940.49
Net interim earnings	\$ 16,773.75
Net quarterly backpay	\$ 2,166.74
Medical expenses	\$ 264.32
Severance allowance	\$ 564.00
Net backpay	\$ 1,867.06

G. GORANSON

Gross backpay	\$ 19,989.33
Net interim earnings	\$ 16,400.38
Total net quarterly backpay	\$ 1,543.95
Severance pay	\$ 776.00
Net backpay	\$ 767.95

R. JENSEN

Gross backpay	\$ 19,735.65
Net interim earnings	\$ 6,611.32
Total net quarterly backpay	\$ 13,124.33
Medical expenses	\$ 421.97
Severance allowance	\$ 564.00
Net backpay	\$ 12,982.30

J. LONGNECKER
(Reinstated)H. BRADFORD
(Reinstated)

Gross backpay	\$ 26,716.34
Net interim earnings	\$ 22,677.00
Net quarterly backpay	\$ 4,231.72
Medical expenses	\$ 475.07
Severance pay	\$ 564.00
** Net backpay	\$ 4,142.79

Gross backpay	\$ 23,750.27
Net interim earnings	\$ 19,594.22
Net quarterly backpay	\$ 4,156.05
Severance pay	\$ 423.00
** Net backpay	\$ 3,733.05

** Deductions not made for reinstated employees for refunded retirement plan deposits or retirement plan deposits owing, as they may not wish to enroll in the plan. If they do, these amounts should be deducted from net backpay. See Schedule 5 of Answer.

A. FUSARE

Gross backpay	\$ 20,195.39
Net interim earnings	\$ 14,855.68
Net quarterly earnings	\$ 5,339.71
Severance pay	\$ 423.00
Net backpay	\$ 4,916.71

J. PRICE

(Reinstated)

Gross backpay	\$ 26,395.73
Net interim earnings	\$ 8,884.69
Net quarterly pay	\$ 17,511.04
Medical expenses	\$ 378.40
Severance pay	\$ 423.00
Net backpay	\$ 17,466.40

H. CUNNINGHAM

Gross backpay	\$ 23,116.02
Net interim earnings	\$ 15,028.77
Net quarterly backpay	\$ 8,088.25
Medical expenses	\$ 204.30
Severance pay	\$ 423.00
Net backpay	\$ 7,869.55

L. RAINERI

(Reinstated)

Gross backpay	\$ 24,917.24
Net interim earnings	\$ 7,481.38
Net quarterly backpay	\$ 15,514.88
Medical expenses	\$ 164.78
Severance pay	\$ 705.00
Net backpay	\$ 16,895.64

W. REIHL

(Reinstated)

Gross backpay	\$ 23,985.48
Net interim earnings	\$ 20,733.39
Net quarterly backpay	\$ 3,252.09
Severance pay	\$ 423.00
Net backpay	\$ 2,829.09

V. O'LEARY

Gross backpay	\$ 24,106.65
Net interim earnings	\$ 20,085.32
Net quarterly backpay	\$ 4,021.33
Severance pay	\$ 465.60
Net backpay	\$ 3,555.73

C. FONTES

Gross backpay	\$ 18,470.66
Net interim earnings	\$ 20,656.73
Net quarterly backpay	\$ 420.39
Severance pay	\$ 705.00
Net backpay	none

D. LIPPERT

Gross backpay	\$ 9,644.72
Net interim earnings	\$ 19,100.72
Net quarterly backpay	\$ 1,661.68
Severance backpay	\$ 282.00
Net backpay	\$ 1,379.68

Power House EngineersF. LOWELL

Gross backpay	\$ 23,710.55
Net interim earnings	\$ 19,383.67
Net quarterly backpay	\$ 4,326.88
Plus medical expenses	\$ 177.60
Less severance allowance	\$ 728.00
Less early retirement benefits paid	\$ 3,806.40
Overpayment	\$ 29.92

R. HUGHES

Compulsory retirement October 1, 1964

Gross backpay	\$ 20,703.08
Net interim earnings	\$ 4,430.66
Net quarterly backpay	\$ 16,272.42
Medical expense	\$ 422.17
Severance pay	\$ 728.00
Less early retirement benefits paid	\$ 2,603.50
Net backpay	\$ 13,363.09

H. F. HAUETER

Gross backpay	\$ 23,976.61
Net interim earnings	\$ 17,048.27
Net quarterly backpay	\$ 6,928.34
Medical expenses	\$ 172.96
Severance pay	\$ 728.00
Net backpay	\$ 6,373.30

E. JOHNSON

Gross backpay	\$ 22,336.30
Net interim earnings	\$ 6,058.09
Net quarterly backpay	\$ 16,278.21
Medical expenses	\$ 367.41
Severance pay	\$ 728.00
Early retirement benefits paid	\$ 2,702.70
Net backpay	\$ 13,214.92

G. NOVACEK

Gross backpay	\$ 23,009.51
Net interim earnings	\$ 19,025.05
Net quarterly backpay	\$ 4,220.07
Severance pay	\$ 728.00
Net backpay	\$ 3,492.07

JOHN GIFFIN

Gross backpay	\$ 14,868.48
Net interim earnings	\$ 25,473.78
Net quarterly backpay	\$ 1,837.79
Net backpay owing	\$ 1,837.79

Power House FiremenC. W. OLSON

Computed to June 30, 1967, as Respondent alleged he forfeited reinstatement due to picket line violence

Net interim earnings	\$ 35,091.35
Net quarterly backpay	\$ 10,747.61
Severance pay	\$ 705.00
Net backpay	\$ 10,042.61

E. MANN

Gross backpay	\$ 12,108.06
Net interim earnings	\$ 7,373.38
Net quarterly backpay (including \$90.48 medical expenses)	\$ 5,681.06
Severance pay	\$ 564.00
Net backpay	\$ 5,117.06

J. VAN ZOEN

Gross backpay	\$ 12,108.06
Interim earnings	\$ 10,197.26
Net quarterly backpay (including \$1.28 medical expenses)	\$ 2,009.98
Severance pay	\$ 423.00
Net backpay	\$ 1,586.98

J. WALL

Gross backpay	\$ 13,700.48
Net interim earnings	\$ 10,623.75
Net quarterly backpay (including \$239.65 medical expenses)	\$ 3,316.38
* Severance pay	\$ 282.00
Net backpay	\$ 3,034.38

[Caption Omitted in Printing]

GENERAL COUNSEL'S EXCEPTIONS
TO THE TRIAL EXAMINER'S BACKPAY DECISION

Pursuant to the Board's Rules and Regulations, Series 8, as amended, Section 102.46 (a), Counsel for the General Counsel of the National Labor Relations Board hereby files exceptions to certain portions of the Trial Examiner's Backpay Decision in the above case, which decision was issued on May 23, 1968, by Trial Examiner Henry S. Sahm.

<u>Page</u>	<u>Line</u>	<u>Exceptions</u>
3	7 - 8	1. To the statement that the Board's Supplemental Decision issued on September 14, 1962. /The said decision issued on September 13, 1962. See 138 NLRB 550.7
3	23	2. To the failure to include the matter of F. C. Johnson's eligibility for backpay among the issues in dispute.
6	53-55	3. To the conclusion that there is agreement among the parties with respect to the average quarterly earnings of <u>each</u> terminated employee during the base period, August 4, 1958 through July 31, 1959. /The parties are in dispute as to the average quarterly earnings of David Arca during the base period (Tr. 7, 406-408).7

- 8 24-25 4. To the finding that in January, 1965, the independent contractor's employees received a wage of \$4.00 per hour. [The independent contractors' employees were paid \$4.63 per hour from June 16, 1963 through June 15, 1965 (Tr. 124,875,876,935,936).]
- 8 43-46 5. To the finding that the record is not entirely clear as to the exact wage rate paid to the independent contractor by Respondent and to the conclusion that it appears to have been approximately \$4.00 per hour. [The wage rates paid to the independent contractors' employees from June 16, 1959 to June 16, 1967 were stipulated by the parties (Tr. 935,936) and the amount in excess thereof—i.e., the contractors' profit—has no materiality herein.]
- 8 51-54 6. To the finding that \$4.00 was the rate paid to the independent contractor. [See parenthetical comment following Exception No. 5, above.]
- 10 4-5 7. To the finding that Respondent subcontracted the maintenance work to an independent contractor at a wage rate less than the machinists had been receiving. [The independent contractor paid a wage rate in excess of that received by the machinists herein (Tr. 124,875,876,935,936).]
- 10 42-46 8. To the conclusion that Burke testified the ILWU millwrights received no wage increase in 1959 or 1960 because he forgot all about them.

- 11 19-21 9. To the finding that on February 1, 1964 automatic controls were installed in the powerhouse. The correct date is January 15, 1964 (Tr. 122).
- 11 25-26 10. To the statement that the Union claims the normal complement as of July 31, 1959 was 37 machinists and four helpers. The Union stated that, as of July 31, 1959, there were 39 machinists and 14 employees on which there is no issue: 10 powerhouse employees and 4 helpers (Tr. 458).
- 12 38-40 11. To the statement that the Union acknowledges that there was some elimination of work in the main machine shop as a result of changes in the floor covering, linoleum and roofing departments.

* * *

[Caption Omitted in Printing]

SUPPLEMENTAL DECISION AND ORDER

On May 23, 1968, Trial Examiner Henry S. Sahm issued his Trial Examiner's Backpay Decision, attached hereto, finding that specific amounts of backpay be awarded to certain employees of the Respondent.^{1/}

Thereafter, the Respondent, the Charging Parties, and the General Counsel

^{1/} On March 27, 1961, the Board issued a Decision and Order, 130 NLRB 1558, finding that Respondent had not committed unfair labor practices within the meaning of 8(a)(1), (3), and (5) of the Act and sustaining the Trial Examiner's dismissal of the complaint. The Charging Parties' petition for reconsideration was granted by the Board and on September 13, 1962, the Board issued a Supplemental Decision and Order, 138 NLRB 550, in which it found that "Respondent violated Section 8(a)(5) by unilaterally subcontracting its maintenance work without bargaining with the Charging Unions over its decision to do so." The Supplemental Decision and Order did not modify the original decision with respect to the dismissal of the charges under Section 8(a)(1) and 8(a)(3) of the Act.

On July 3, 1963, (322 F.2d 411) the Court of Appeals for the District of Columbia Circuit granted the Board's petition for enforcement. The Supreme Court, on December 14, 1964, affirmed the judgment of the Court of Appeals, holding that Respondent was obligated to bargain and that the Board's order was within its power to fashion remedies (379 U.S. 203).

filed exceptions to the Trial Examiner's Backpay Decision with briefs in support thereof; the Respondent filed a brief in answer to the exceptions of the General Counsel and the Union; the General Counsel filed a brief in answer to Respondent's exceptions, and the Union filed a reply brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

- 2 - The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the entire record in this case, including the Trial Examiner's Backpay Decision, the exceptions, the briefs, and the answering briefs, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner only to the extent that they are consistent herewith.

(1) The Charging Party (hereinafter referred to as Local 1304 or the Union) excepts to the wage formula found applicable by the Trial Examiner for computing the terminated employees' gross backpay during the backpay period, September 14, 1962 to January 18, 1965.^{2/} We find merit in the Union's exceptions.

The Local 1304 maintenance machinists were terminated on August 1, 1959; the collective-bargaining agreement between Respondent and Local 1304 had expired at midnight July 31, 1959. According to the provisions of that collective-bargaining agreement the machinists' wage rates were determined by the so-called "Pabco Wage Formula" (hereinafter

^{2/} The Board's Supplemental Decision (138 NLRB 550) limited backpay to earnings which might have been received from and after the date of the Supplemental Decision, September 13, 1962, rather than from the date of the employees' termination, August 1, 1959. The period August 1, 1959, to September 14, 1962, is referred to as the hiatus period.

"Pabco formula") which established the unit employees rate at "one dollar per day (or 12.5 cents per hour) less than the prevailing Building and Construction Crafts Scale" (construction millwrights).^{3/}

The "Pabco formula", first embodied in the collective-bargaining agreement effective August 1, 1951, was incorporated in each succeeding

- 3 - agreement through July 31, 1959. The ILWU millwrights employed by Respondent received the same wage rates as the terminated machinists from July 1946 to July 31, 1959; the ILWU millwrights' wage rates were not independently established, but were determined by Local 1304's collective bargaining agreement in automatic fashion.^{4/} After the Union machinists were terminated, the ILWU millwrights, of which there were apparently only 2, continued to work and, in fact, replaced the machinists in the felt mill; however, they received no wage increase until 1961, when it was agreed that they would receive the increases set forth in the collective bargaining agreement between the Respondent and the ILWU production employees.^{5/} Upon the machinists' termination the Respondent contracted out the maintenance work

^{3/} The terms "building trades millwrights", "building and construction crafts" and "construction millwrights" are used interchangeably herein.

At the time of termination the machinists were receiving \$3.525 per hour under the "Pabco formula." The hourly rates payable under the "Pabco formula" during the backpay period would have been: September 14, 1962, to July 31, 1963 - \$4.275; August 1, 1963, to January 18, 1965 - \$4.505.

^{4/} According to Burke, the ILWU business agent, the ILWU millwrights "waited until Local 1304 . . . settled their negotiations and then adjustments were automatically passed on to our group under our contract . . . It was just a matter of processing through payrolls, it was automatic."

^{5/} The Respondent had collective-bargaining agreements with the ILWU production workers; these agreements did not include the ILWU millwrights until 1961.

During the backpay period the ILWU millwrights received the following hourly rates: September 1962 to May 31, 1963 - \$3.695; June 1, 1963 to May 31, 1964 - \$3.795; June 1, 1964 to May 31, 1965 - \$3.895. Beginning June 1, 1965, they received \$3.985 per hour.

to an independent contractor, which employed millwrights and paid them the building trades or construction millwright wage rates.^{6/}

The Trial Examiner rejected the "Pabco formula" and found that the wage rates received by the ILWU millwrights should be utilized in computing the gross backpay of the terminated machinists. In excepting,

- 4 - the Union contends that the "Pabco formula" is the most reasonable and objective criterion for computing the machinists' backpay, since it had appeared in every contract between the parties from 1951 to 1959 and is reasonably close to the wage rates received by the employees of the independent contractor, who replaced the terminated machinists. Moreover, it contends that Respondent has failed to show with reasonable certainty that if it had not been for Respondent's unlawful act, different wage rates would have been negotiated for the 1962 to 1965 backpay period.

The Board's function in this proceeding is to determine the amount of backpay that will, as nearly as possible, make the unlawfully terminated employees whole. This is not always an easy task. For as the Eighth Circuit pointed in N.L.R.B. v. Brown & Root, Inc.:^{7/}

Obviously, in many cases it is difficult for the Board to determine precisely the amount of backpay which should be awarded to an employee. In such circumstances the Board may use as close approximations as possible, and may adopt the formula reasonably designed to produce such approximations

6/ These hourly rates were:

Effective June 16, 1959 - \$3.76
Effective June 16, 1960 - \$3.945
Effective June 16, 1961 - \$4.18
Effective June 16, 1962 - \$4.40
Effective June 16, 1963 - \$4.63
Effective June 16, 1965 - \$4.925

It should be noted that these rates (building trades or construction millwrights) are the same rates upon which the "Pabco formula" was based. Thus, if the machinists had not been terminated and the "Pabco formula" had remained in their contract with Respondent, the machinists actually would have been receiving 12.5 cents per hour less than the independent contractor's employees who replaced them received.

7/ 311 F.2d 447, 452 (C.A. 8).

In our opinion, the circumstances herein permit only reasonable approximation. We also emphasize that any uncertainty must be resolved ^{8/} against the wrongdoer whose conduct made certainty impossible.

The Trial Examiner correctly found the following principle of law applicable to this case: "Loss of earnings of backpay claimants should be measured by the earnings of their replacements or comparable employees" (emphasis supplied). In finding that the rates of the ILWU millwrights are the best measure of what the terminated machinists would have received, the Trial Examiner emphasized that the ILWU millwrights performed work requiring skills comparable to the terminated machinists. He did not consider, however, the wage rates of the independent contractor's employees who actually replaced the terminated machinists on 19 of the 21 jobs he found available during the backpay period. Presumably the failure to consider the replacements' wage rates resulted from the fact that he erred with respect to the hourly rates received by the independent contractor's employees since he found that their hourly rate was \$4.00 in January 1965, or about the same rate as the ILWU millwrights. In fact, the independent contractor's millwrights ^{9/} were receiving \$4.63 in January, 1965. Having erroneously found that the wage rate of the replacements of the backpay claimants was \$4.00, the

- 5 - Trial Examiner concluded that it would be contrary to precedent to utilize

^{8/} See Ozark Hardwood Co., 119 NLRB 1130 enfd. 282 F.2d 1, (C.A. 1); N.L.R.B. v. Miami Coca-Cola Co., 260 F.2d 569 (C.A. 5).

^{9/} The Respondent contends that the Trial Examiner did not err with respect to the rates of the independent contractor, but that the Trial Examiner's reference to a \$4.00 rate was, in fact, a reference to the comparative wage cost to Respondent of employing the independent contractor. Although the Trial Examiner's rather ambiguous footnote (No. 23) appears to lend some support to the Respondent's contention, in our opinion, it is not sufficient to overcome the fact that the Trial Examiner found that in January, 1965, "the independent contractor's employees received \$4.00." Therefore, we can only assume the Trial Examiner was in error with respect to this finding.

the "Pabco formula", which would have provided substantially higher wage rates, because gross backpay "should be measured by the earnings of the backpay claimants' replacements or comparable employees." However, since the independent contractor's employees who replaced the terminated machinists on 19 of the 21 jobs found available by the Trial Examiner, in fact, received higher rates than the "Pabco formula" would have provided, utilization of the "Pabco formula" presents no conflict with precedent.

In finding the ILWU millwright rates the best measure to determine gross backpay, the Trial Examiner also emphasized that the ILWU millwrights had received the same rates as the terminated machinists ^{10/} for 13 years. But he overlooked the fact that historically the ILWU millwrights' wage rates had followed the terminated machinists' rates in an automatic fashion. After August 1, 1959, the ILWU millwrights, of which there were apparently only 2, for one reason or another (be it neglect of their bargaining agent, the fear that they also might be terminated, the realization, as suggested by the Trial Examiner, that their rates were excessive, or just confusion) neither bargained for nor received a wage increase until 1961. From this fact the Trial Examiner concluded that "it is not too unreasonable to assume that they (the ILWU millwrights) recognized the soundness of Fibreboard's claim that the.

^{10/} The Trial Examiner attempts to bolster his support for the ILWU millwrights' rates by arguing that the rates paid by other employers with whom the Union had contracts should be considered. He points out that the contract of Foremost Food and Chemical provides the highest rates and that the Foremost rate is approximately the same as the ILWU millwrights received during the backpay period. The simple answer to the Trial Examiner's argument, however, is that prior to 1959, Respondent had voluntarily negotiated contracts with the Union which contained rates significantly higher than those paid by Foremost or the other employers with whom the Union had contracts. Thus, in January 1958, the Foremost rate was \$2.93 and the Fibreboard rate was \$3.375; in January 1959, the Foremost rate was \$3.04, and the Fibreboard rate was \$3.525. Therefore, unlike the Trial Examiner, we see no reason to attach any significance to wage rates included in contracts negotiated by the Union with any other employer.

terminated machinists' wage rates under the Pabco formula . . . were too high." To the contrary, it seems just as reasonable, if not more reasonable, to assume that the ILWU millwrights realized that if they requested higher wage rates they might follow in the footsteps of the terminated machinists. In our opinion, if we accept the ILWU millwrights' rates as the backpay period wage rates, we are placed in the rather anomalous position of finding that the backpay claimants' rates should be determined by a control group (the ILWU millwrights) whose wage rate had previously followed their own, and who, for almost a 3-year period, might not have requested or received a wage increase precisely because of the Respondent's unlawful termination of the backpay claimants.

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But the factor deemed most significant by the Trial Examiner in rejecting the "Pabco formula" is that if the "Pabco formula" were adopted, the backpay claimants would receive higher wage rates during the backpay period than the rate the Union eventually agreed to upon their return to work. The Trial Examiner was of the opinion that such a result would be not only specious but strange.

The terminated machinists returned to work in March 1965, at \$3.74 per hour "pending negotiations". In July 1965, Local 1304 and the Respondent executed a collective-bargaining agreement which provided a \$4.00 wage rate. While we agree that a subsequently negotiated wage rate is one factor to be considered in determining a wage rate applicable to the backpay period, we do not agree that it is the controlling factor. Moreover, it appears necessary to consider the Union's bargaining position in 1965. The negotiations matched a Union weakened by 6 years off the job, without a majority of the former employees back in the plant, against a Respondent determined to preserve the savings it had achieved through its unlawful contracting-out. In addition, the Respondent made it clear that

it considered that its only obligation was to talk.^{11/} In this situation the Union had been warned by its counsel to avoid an impasse at all cost. In the circumstances of this case, we do not believe that the wage rates that resulted from the 1965 bargaining should be considered a controlling factor in the determination of the backpay wage rates.

But, the Respondent contends the Union had the same bargaining weaknesses in 1959 as it did in 1965. Stressing, as did the Trial Examiner,

- 8 - that its decision to subcontract the maintenance work was economically motivated and justified, the Respondent assumes as a forgone conclusion that had bargaining occurred in 1959, the "Pabco formula" would have been eliminated or the maintenance work subcontracted, and contends that the Trial Examiner's finding merely constitutes an attempt to apply the wage rates which in all probability would have resulted from bargaining in 1959.

In its Answering Brief the Respondent states:

But to assume as does the Union that bargaining in 1959 would have resulted in abandonment by Fibreboard of its plans to contract out the work, and in renewal in that and subsequent years of the old contract and its wage formula is to ignore the fact that this is exactly what Fibreboard refused to do and that it made its refusal stick.

The simple answer to this assertion is that Respondent did not negotiate reduced wage rates in 1959 and that it made its refusal "stick" because it refused to bargain over its decision to subcontract, and that

11/ Thus, R.C. Thurmann, Respondent's director of industrial relations candidly admitted:

The very first meeting that I held with 1704 I reviewed with them where we were and that if we had only known back in '59 that we were supposed to do some talking before our minds were made up, why we would have gone through that motion and I said now we are going through that motion now and as you understand fully that we are only obliged to discuss this matter with you and then if we find that we cannot work it out to our satisfaction, we are at liberty to continue on with our contracting.

this refusal was precisely the gravamen of its unfair labor practice as found by the Board, the D.C. Circuit Court of Appeals, and the Supreme Court.

For as the Supreme Court said:

The Company was concerned with the high cost of its maintenance operation. It was induced to contract out the work by assurances from the independent contractor that economies could be derived by reducing the work force, decreasing fringe benefits, and eliminating overtime payments. These have long been regarded as matters particularly suitable for resolution within the collective bargaining framework Yet it contended that when an employer can effect cost savings in these respects by contracting the work out, there is no need to attempt similar economies through negotiations with existing employees or to provide them with an opportunity to negotiate a mutually acceptable alternative. The short answer is that, although it is not possible to say whether a satisfactory solution could be reached, national labor policy is founded on the congressional determination that the chances are good enough to warrant subjecting such issues to the process of collective negotiations.

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In the words of the Supreme Court, "it is not possible to say whether a satisfactory solution could have been reached . . ." Indeed, as the Respondent contends, the Union might not have been able to persuade the Respondent not to contract-out or retain the "Pabco formula". On the other hand, it is by no means clear that the parties could not have reached an agreement in 1959 which would not have eliminated the "Pabco formula". The fact that the Respondent did not give the Union an opportunity to attempt to reach such an agreement was found violative of the Act. Thus, any uncertainty with respect to what wage rates the backpay claimants would have received except for termination was created by the Respondent, which bears the risk of that uncertainty.

In the circumstances of this case we are of the opinion that the "Pabco formula" provides the most reasonable, acceptable, and objective approximation of what the backpay claimants would have received. Accordingly, we find that the gross backpay of the terminated machinists for the backpay

period beginning September 14, 1962, ending January 18, 1965, be computed on the basis of the "Pabco Wage Formula".^{12/}

(2) The Trial Examiner found that in addition to the 10 jobs that were available in the powerhouse (over which there is no dispute),^{13/} there were 21 available jobs for the maintenance machinists during the backpay period. The General Counsel and the Union except,^{14/} contending there were 31 jobs available; the Respondent excepts, contending there were only 16 jobs available.

The essence of the General Counsel's and Union's contention is that the burden of alleging and proving job diminution during the backpay period is on the Respondent and that Respondent has not carried this burden. We are of the opinion that the evidence offered by the Respondent to show diminution of available jobs supports the Trial Examiner's finding that there were 21 available jobs at the beginning of the backpay period.

In finding that there were 14 maintenance jobs available at the Emeryville plant, excluding the 2 jobs in the paint shop and felt mill, the Trial Examiner relied on Union Exhibit No. 21 (which the Union through a miscalculation had introduced to show there were 24 jobs available), a

12/ These hourly rates are:

September 14, 1962 to July 31, 1963 - \$4.275

August 1, 1963 to January 18, 1965 - \$4.505

13/ The Trial Examiner found that on February 1, 1964, automatic controls were installed in the powerhouse, eliminating the need for 5 firemen. However, the parties stipulated that the automatic controls were installed on January 15, 1964, and not February 1st. The Trial Examiner's finding is hereby corrected to accord with that stipulation. None of the discussion concerning availability of jobs that follows includes the 10 powerhouse jobs.

14/ The General Counsel and the Union arrived at the conclusion that 31 jobs would have been available by taking the number of machinists employed on July 31, 1959, and reducing this number by the stipulated manpower reductions which occurred between that date and the commencement of the backpay period. There is a complex dispute as to the number of machinists that constituted the Respondent's work force on July 31, 1959. In view of our determination herein, we find it unnecessary to resolve that issue.

record of man hours worked by the independent contractor's millwrights during 13 of the 28 months comprising the backpay period. By utilizing the average number of hours worked by a machinist in 1958, the Respondent (Respondent's Exhibit No. 18) demonstrated that approximately 13½ jobs (rounded off to 14 by the Trial Examiner) were available at the Emeryville main shop. The General Counsel and the Union contend that these exhibits should be rejected because they cover only 13 of the 28 month backpay period and are limited only to the Emeryville operation. They point out that no claim was made that the records for both operations (Emeryville and Martinez) were unavailable; and that Respondent's failure to produce the records for the full backpay period from its independent contractor - 11 - justified an inference that such records would not support the Respondent's position. Since we find some merit in this contention, we have utilized this evidence only for the limited purpose of providing a means by which to check the accuracy of the testimony of Respondent's witnesses. ^{15/}

Reisenberg, a plant engineer and former maintenance engineer for the insulation department, testified that the independent contractor regularly assigned 5 millwrights from the main shop to insulations during the backpay period. Maffey, who until July 1967, was plant engineer in control of the main shop, testified that excluding the 5 millwrights assigned to insulations, the independent contractor utilized from 6 to 9 millwrights

15/ The General Counsel contends that testimony of Respondent's witnesses with respect to the number of employees used by the independent contractor, was not only vague and shifting, but was also secondary in nature (i.e. no representative of the subcontractors was called to testify from first-hand knowledge or from original business records). We agree that it would have been better for the Respondent to have called a representative of the independent contractor for such testimony. We also agree that the witnesses' testimony was at times vague and uncertain; however, the fact remains that the testimony was uncontradicted on the record. We therefore do accept this testimony, but the weight we give it is affected by its nature. (see New England Tank Industries, 147 NLRB 596).

in the main shop. Resolving the uncertainty against the Respondent we find the independent contractor utilized 9 millwrights in addition to the 5 millwrights assigned to insulations or a total of 14 millwrights at Emeryville.^{16/} Sandin, plant engineer at the Martinez Roofing Plant, testified that 5 of the independent contractor's millwrights were regularly assigned to the roofing department at Martinez. Thus, we concur with the Trial Examiner's finding that the number of millwrights required by the independent contractor was 19.

The Trial Examiner erred in finding that ILWU millwrights replaced the machinists in both the felt mill and paint shop, since Maffey testified - 12 - that the work performed by the machinists after August 1, 1959, in the paint shop was performed by the ILWU production workers, not the ILWU millwrights. This error is of no consequence, however, as Maffey also testified that the work done by the ILWU millwrights in the felt mill was the equivalent of 1 to 2 jobs ("it would be one and a half"). In addition, Maffey testified the ILWU production workers did the work formerly done by the terminated machinists in the paint shop; this work would properly belong to the machinists. Therefore, we agree with the Trial Examiner's finding that there were 2 jobs available in the paint shop and felt mill combined.

In response, however, Respondent contends that the ILWU millwrights worked out of the main shop and if 2 separate jobs are found for the paint shop and felt mill, this results in counting the work twice, since it has already been counted in the 14 jobs found available at the Emeryville main shop. This contention, in our opinion, is not supported by the record. In the first place, Maffey did not testify that the number of jobs available in

^{16/} It should be noted that this number of jobs, 14, is the same as the number found by the Trial Examiner for the main shop at Emeryville. Thus, to this extent, Union Exhibit No. 21 and Respondent's Exhibit No. 18, upon which the Trial Examiner relied, confirm the testimony of Respondent's witnesses.

the main shop included the 2 ILWU millwrights. Moreover, the Respondent's contention is not supported by Union Exhibit No. 21 and Respondent Exhibit No. 18, on which the Trial Examiner relied to show that 14 jobs were available in the Emeryville main shop.^{17/} For those exhibits were based on a tabulation of the total hours worked by the independent contractor's millwrights, and it is unlikely that the hours of the ILWU millwrights employed by the Respondent would be included in such tabulation.

In conclusion, we adopt the Trial Examiner's finding that there were 2 jobs available in the felt mill and paint shop and that the total number of jobs available for the terminated machinists during the backpay period was 21.

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After finding that 21 machinist jobs were available at the beginning of the backpay period (and that no additional machinists jobs were eliminated during the backpay period), the Trial Examiner assigned 21 names in order of seniority to these jobs. In so doing, however, he neglected to consider whether each of the machinists assigned to the 21 available jobs was eligible to work or could have worked throughout the entire backpay period. Therefore, in our final determination of backpay eligibility, we have awarded backpay to the next eligible backpay claimant according to seniority in each instance where a backpay claimant was ineligible to work or for some other reason could not work during the backpay period.^{18/}

^{17/} The Respondent contends that at least 2 jobs should be deducted from these 14 jobs because the work involved rigging and welding not formerly done by the machinists. For the reasons set forth by the Trial Examiner, we reject this contention.

^{18/} This determination is in accordance with the stipulation of the parties that "in computing backpay of terminated employees, it is deemed that they would have been called for available work in order of their seniority within their classification . . ." The Respondent also agrees, since it states in its brief that "the number of machinists thus entitled to reinstatement and backpay is somewhat more than 16 (the number of jobs it contended were available) as a result of retirements and disabilities which would have occurred during the backpay period."

(3) We agree with the Trial Examiner's finding that the terminated machinists are not entitled to "current service benefits" also referred to as pension credits for the hiatus period (August 1, 1959 to September 13, 1962) since such credits are based on wages received, and to find otherwise would be tantamount to awarding backpay for the hiatus period in contravention of the Board's order.

(4) The Trial Examiner held that the severance or termination payments made to the terminated employees on July 31, 1959, should be deducted from gross backpay. His grounds for this were twofold: 1. Since the termination of the employment relationship in contemplation of which the payments were made did not occur (the Board having ordered reinstatement), not to permit the deduction of these payments would penalize the Respondent - 14 - as it would, in effect, have to pay twice; 2. The terminations were nullified by the reinstatement order which resulted in a failure of consideration for the payments.

The Union and the General Counsel except, contending that the severance allowance is not a permissible deduction from backpay in that it was paid during and for the first month or two of the hiatus period when no backpay accrued and therefore under the Board's quarterly method of determining the amount of backpay owing, there is nothing from which it can be deducted.^{19/} We find merit in the exceptions.

The termination payments were made on July 31, 1959, along with two-weeks pay in lieu of notice. The payments, which were based on past service, varied from a low of \$282 to a high of \$776.^{20/} The collective-bargaining agreement between local 1304 and the Respondent made no provision

^{19/} Under the Board's quarterly method of determining backpay owing, interim earnings received in one quarter are not deducted from backpay accrued in another quarter (see F.W. Woolworth Co., 90 NLRB 289).

^{20/} If viewed as wages, the payments would cover no more than a month or two of wages during the hiatus period.

for a severance allowance. Thus, it appears that for reasons best known to it, the Respondent voluntarily chose to give these allowances to the terminated machinists.^{21/}

We find the Trial Examiner's holding that "... since the terminations were nullified by the reinstatement order, this resulted in a failure of consideration" without merit. As noted above, the collective bargaining agreement had no provision for severance payments. It is also clear that there was no bilateral contractual relationship established by which the employees voluntarily terminated employment in return for severance payments.

As stated by the Trial Examiner, the purpose behind a backpay order is to make an employee "whole"; it is not to enrich him by ordering the Respondent to pay twice. The rationale for deducting severance payments from backpay in the normal case is that they are in lieu of, or similar to, wages and allowing the employee to have backpay plus the severance allowance would make him more than "whole". In the instant case, however, the employees cannot be made more than "whole" because, unlike the normal case, backpay did not accrue from the date of termination. Moreover, it appears clear that the Board has considered severance payments to be in the nature of "earnings" or wages, since it has allowed severance payments as

^{21/} In rejecting the General Counsel's contention that the severance payments were not discussed with the Union, the Trial Examiner stated (footnote No. 62 of his Decision):

The original decision states that these severance payments were negotiated with the Union although not called for under the terms of the collective bargaining agreement.

However, the Trial Examiner, in the original proceeding, did not find that severance payments were negotiated, but only that the facts did not support the allegation that the Respondent violated Section 8(a)(5) by refusing to bargain with respect to the severance allowance (130 NLRB 1558 at 1573).

a deduction from gross backpay when backpay has accrued in the period in which the payment was made. ^{22/}

- 16 - Accordingly, under the Board's quarterly method of determining backpay owing, we will not consider the severance payments made on July 31, 1959, as deductions against backpay, since no backpay accrued in that quarter from which to deduct the payment.

(5) We agree with the Trial Examiner's finding that interest be paid on the net backpay from September 14, 1962.

(6) We find, in agreement with the Trial Examiner, that the disputed compulsory retirement dates of the seven machinists occurred on the following dates: ^{23/}

22/ The Respondent, however, contends that unlike the two-week pay in lieu of notice, the severance payment was not a wage payment for some particular future period; indeed it was not a wage payment at all but was a payment based on past services rendered, made in contemplation and consideration of termination of the employment relationship. We note that the Respondent's explanation of the severance allowance is not wholly consistent with the definition of "severance pay" (Commerce Clearing House, "Dictionary of Law Terms, Second Edition ---- 1953") upon which the Trial Examiner relied and to which the Respondent took no exception. According to that definition of severance pay, our finding is consistent with the underlying purpose of severance pay. For that definition makes it clear that, "the idea behind dismissal wages is to aid the worker while he is seeking employment elsewhere or adjusting himself to a new job." Thus, according to that definition, and contrary to the Respondent's contention, a severance payment, not only is considered to be for some particular future period, but is granted for the purpose of tiding the employee over during the period immediately following termination.

23/ In so finding, we do not rely on the Trial Examiner's finding that the document submitted by the Respondent to the Board compliance officer in 1965 or the compilation entitled "Retirement Plan Status ..." submitted to the Union by the Respondent during the 1965 bargaining sessions, which shows the compulsory retirement dates of these men to be January 1, 1963, was a coincidental error and not confirmation of the fact that the Respondent agreed that the retirement dates of these men were January 1, 1963. Nor do we adopt his comments with respect to the parole evidence rule. Instead, we rely on the fact that the Trial Examiner did not credit the Union witnesses who testified that an oral agreement postponing the compulsory retirement date of these men to January 1, 1963, was made.

Gronberg	February 1, 1962	Crispino	October 1, 1962
Capps	June 1, 1962	Hamidy	December 1, 1962
J.P. Johnson	August 1, 1962	Bennett	December 1, 1962
Holmes	September 1, 1962 <u>24/</u>		

17 - (7) The Trial Examiner found that Fred C. Johnson is not entitled to backpay because he did not engage in a diligent and continuous effort to find gainful employment and thereby incurred a willful loss of earnings. The Union and the General Counsel except to this finding. We find merit in their exceptions.

The Trial Examiner correctly stated the applicable law as follows: Willful loss of earnings is an affirmative defense, and that burden of proof is on the Respondent. ^{25/} Once the General Counsel has shown the gross amount of backpay due, the burden is on the employer to establish facts to negative or mitigate liability to a given employee. ^{26/} And finally, "any uncertainty is resolved against the wrongdoer whose conduct made certainty impossible." ^{27/}

In attempting to meet its burden of proof, the Respondent limited itself to calling Johnson as a witness. The Respondent introduced no other evidence to show that Johnson's efforts to find work were unreasonable or that other suitable jobs were available in the area for a person of Johnson's age and experience. ^{28/}

Johnson's uncontradicted testimony may be summarized as follows:

After his termination on July 31, 1959, (he had been employed by Respondent for approximately 22 years) he immediately sought other employment; he registered at the Union hall and State Employment Office and reported twice a week at the Union hall and once a week at the State office. He also applied at every place where he thought he might be able to handle

24/ As a consequence of this finding, Gronberg, Capps, J.P. Johnson, and Holmes, whose compulsory retirement dates fell before the commencement of the backpay period, are ineligible for backpay.

25/ N.L.R.B. v. Mooney Aircraft, Inc. 366 F.2d 809 (C.A. 5).

26/ N.L.R.B. v. Brown & Root, Inc., 311 F.2d 447 (C.A. 8).

27/ N.L.R.B. v. Miami Coca-Cola Co., 360 F.2d 569 (C.A. 5).

28/ See N.L.R.B. v. Brown & Root, Inc., 311 F.2d 447 (C.A. 8).

29/ the work. He contacted two or three employers a day, answered "help wanted"

- 18 - ads and filled application blanks for various firms. He soon found that his age (57 years at the time of his discharge) in addition to the fact that he was not a journeyman machinist was a sever handicap in his search for work. 30/

In November 1959, he obtained work as a machinist with a trailer company where he worked until February 1960, after which he resumed his search for work and kept up his registration with the Union and the State Employment Office. By May of 1960, having had only 3 months work in the previous 9 months, and feeling that he had exhausted the possibilities of finding work in the Bay Area, he sold his home in Oakland and moved to the town of South Lake Tahoe, California, where he had purchased a lot 3 years earlier, and eventually intended to retire. Since moving to Lake Tahoe, which has no industrial plants, he has tried his hand in an unsuccessful contracting business (building and selling homes), worked in a motel, and at a boat shop repairing motor boats for \$2 per hour. Respondent reinstated him to his former job about March 18, 1965 (reinstatement was originally scheduled for January 1965) but Johnson quit 2 weeks later (April 2, 1965) and returned to Lake Tahoe.

It was also brought out that Johnson received, both after his termination and while he was employed at Fibreboard, about \$4000 in investment income annually; and that he became eligible for Social Security benefits and pension benefits from Respondent in September, 1967. Johnson worked during seven of the eleven quarters of his backpay period.

29/ Among the places he specifically recalls applying to were American Machine and Foundry, American Can Company, Continental Can Company, Mother's Cake and Cookies Co., a press punch company, and a trailer company.

30/ In early 1960, in a telephone interview with a press punch company, whose name he didn't recall, he felt he was about to be hired until the interviewer learned he was 58 years old. At American Machine and Foundry he was told that he had passed written and oral tests "with flying colors" but was never called to work.

The Trial Examiner rejected Johnson's testimony, characterizing it as unspecific and a maze of confusion. Yet Johnson's testimony stands uncontradicted and unrefuted. Moreover, except to the limited extent that these characterizations may be based on the Trial Examiner's evaluation of Johnson's demeanor, we are of the opinion that they are unwarranted upon a careful reading of the record. For such a reading reveals that Johnson's testimony is rather clear and consistent, when it is considered that Johnson was testifying to events that had occurred as long as 8 years before he testified. Thus, we do not find it unusual that Johnson could not recall the dates upon which he sought specific jobs.

The Trial Examiner characterized Johnson's contacts with the State Employment Office and his Union as a sham, insincere and "an automatic going through the motions in order to be eligible for unemployment compensation". In our opinion there is no basis whatsoever for inferring lack of motivation in seeking work from the fact that an employee made weekly visits to the State Employment Office or his Union Hall, or from the fact that he received unemployment compensation.

Nor do we believe that the Trial Examiner was justified in drawing adverse inferences and presumptions concerning Johnson's motivation from the following:

1. That Johnson testified that he eventually intended to retire to Lake Tahoe. For the fact remains that Johnson did not retire; he moved to Lake Tahoe only after his attempt to find work in the Bay Area appeared futile. Moreover, at Lake Tahoe he continued to work at whatever he could find.

2. That as a result of his "happy situation" (\$4000 annually as investment income along with the prospect of Social Security benefits and a pension from Respondent) he was not obliged to seek work and therefore

removed himself from the labor market. In our opinion the fact that Johnson had about \$4000 per annum investment income is irrelevant and is not - 20 grounds for imputing lack of motivation and diligence in seeking work to him, particularly in view of the fact that he also received the investment income while he was employed by Respondent. In addition, he was not eligible to receive the Social Security benefits or retirement benefits from Respondent until approximately 7 years after he moved to Lake Tahoe.

3. That Johnson quit his job with Respondent two weeks after he was reinstated in March 1965. Needless to say, it was clearly within Johnson's right to accept or reject Respondent's reinstatement offer for ^{31/} any reason or no reason and to remain on the job as long as he chose.

We are of the opinion that Johnson made satisfactory and reasonable efforts to obtain work through his registration at the Union hall, the State Employment Office, and his own independent actions. He had searched diligently for work in the Bay Area for some 9 months after his termination with little success; while there, he had also discovered that his age and ^{32/} lack of journeyman's skills hindered his effort to find work. He was under no obligation to continue such a presumptively futile search indefinitely. That he then moved from an industrial area to a rural area is not evidence

- 31/ The Trial Examiner also found that Johnson accepted reinstatement "only because the Union importuned him to do so in connection with this matter of backpay." In our opinion, this finding is not justified because Johnson also testified that he had to leave on the 1st day of April for another engagement. He further testified that reinstatement was offered in the first part of January 1965, and that he thought he would thus have an opportunity to get 2 or 3 months work from Respondent.
- 32/ See N.L.R.B. v. Pugh & Barr, Inc., 231 F.2d 558, (C.A. 4) which holds that in determining the reasonableness of an effort to find employment, the employee's age and the labor conditions in the area must be considered.

21 of withdrawal from the labor market.^{33/} Moreover, Johnson accepted less desirable work at lower pay and had interim earnings in 7 of the 11 quarters in which he was entitled to backpay. The fact that Johnson was unemployed or received low interim earnings during part of the backpay period does not give rise to a presumption that he failed to seek work or that he willfully incurred loss of earnings.^{34/} In these circumstances, that Johnson moved to another area and accepted lesser jobs at lower pay does not preclude his entitlement to backpay.^{35/} In our opinion, the Trial Examiner's reliance on Johnson's "few jobs" and sporadic employment is also misplaced. Success in finding employment is not equated with a good faith effort in seeking employment.^{36/}

^{33/} Charles T. Reynolds Box Co. 155 NLRB 384. See also N.L.R.B. v. Reynolds Box Co. 399 F.2d 668 where the Sixth Circuit, in rejecting a contention that many employees had removed themselves from the labor market by moving from an industrial to various rural areas stated, "...it is the duty of the Respondent to carry the burden of proof . . . /G/eneral-izations that employees do not want to work after their unlawful discharge, and return to their home area to avoid working are not sufficient to establish respondents' case. . . ."

^{34/} Miami Coca Cola Bottling Co., 151 NLRB 1701.

^{35/} Efco Mfg. Co. 111 NLRB 1032, Salant & Salant 92 NLRB 343. See also Robert Haws Company 161 NLRB 299, *enfd.* in pertinent part 403 F.2d 979. (C.A.6) In that case the Trial Examiner, whose finding was adopted by the Board and the Court, stated:

A discriminatorily discharged employee is required to exercise reasonable efforts to mitigate his loss of earnings by seeking other suitable employment. However, there is no requirement that his search for employment must be limited to the geographical area where he had been working when he was discriminatorily discharged and there is no evidence in the record which suggests that Reynolds exercised unreasonably bad judgment in leaving Detroit to look for work elsewhere. Furthermore, immediately following his discharge, Reynolds did look for employment in Detroit and after he left that city he did not restrict his search for employment to West Virginia but also went to the State of Ohio and ultimately returned to Detroit. In these circumstances, contrary to Respondent, I find that the various moves Reynolds made in the course of his search for employment do not constitute any willful loss of earnings.

^{36/} Mastro Plastics Corporation, Inc., 136 NLRB 1342, *enfd.* 354 F.2d 170 (C.A. 2), cert. denied 384 U.S. 972. See particularly Heinrich Motors, Inc., 153 NLRB 1575, *enfd.* 403 F.2d 145, with respect to the effect of an employee's attempt at self-employment.

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In conclusion, we are of the opinion that Johnson made an honest, good faith effort to obtain work throughout the hiatus and backpay periods. Accordingly, we find that Johnson is entitled to backpay.

(8) The Trial Examiner found that terminated machinists David Arca and Lincoln Beck forfeited their right to reinstatement and backpay because of their picket line misconduct in August, 1959. The Trial Examiner further found that the picket line activity engaged in by Carl Olson in August 1959, did not warrant denying him reinstatement and backpay.

The Respondent excepts to the Trial Examiner's finding that Olson's conduct did not warrant forfeiture of his backpay and reinstatement rights. The General Counsel and the Union except to the finding that Arca and Beck be denied reinstatement and backpay, contending that the Trial Examiner should not have reached the issue whether Arca, Beck, and Olson were subject to forfeiture of backpay and reinstatement, because the Respondent's defense of picket line misconduct with respect to these employees was not timely raised ("barred by laches"). In the alternative, they contend that the conduct of Arca and Beck does not warrant forfeiture of backpay and reinstatement rights; they agree with the Trial Examiner's finding with respect to Olson.

We find it unnecessary to decide whether the alleged picket line misconduct of Arca, Beck, and Olson would, in other circumstances, have warranted forfeiture of their backpay and reinstatement rights, as we agree with the contention of the General Counsel and the Union that Respondent's defense with respect to picket line misconduct was not timely raised.^{37/}

^{37/} At the backpay hearing, the General Counsel objected to the receipt of any evidence (oral or documentary) concerning the alleged picket line misconduct of Arca, Beck and Olson; these objections were overruled. The contention that the Respondent's defense to the reinstatement and backpay rights of these backpay claimants could not be raised at this stage of the proceedings was renewed by the General Counsel in his brief to the Trial Examiner. Nevertheless, the Trial Examiner did not mention the contention in his Decision.

Member Zagoria would adopt the Trial Examiner's findings as to Arca and Beck.

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The alleged misconduct of Arca, Beck, and Olson involved picket-line incidents that occurred in August 1959, more than a month prior to the original unfair labor practice hearing. The Respondent does not contend that it had no knowledge of the alleged misconduct; in fact, it had litigated the matter of alleged misconduct in the Alameda County Superior Court from August 24 to September 11, 1959, which was before the Board's unfair labor practice hearing, held on September 21 and 22, 1959.

It should be noted that the General Counsel's Complaint of September 2, 1959, alleged the discharge of the Respondent's maintenance employees, represented by the Union, as violative of Section 8(a)(3) as well as Section 8(a)(5) of the Act.^{38/} The Trial Examiner on November 27, 1959, recommended that the complaint be dismissed in its entirety.^{39/} On March 27, 1961, the Board sustained the Trial Examiner's findings (130 NLRB 1558) and dismissed the complaint. After the Union's May 11, 1961 petition for reconsideration was granted by the Board, the Respondent, on July 11, 1962, filed a petition to reopen the record for the introduction of testimony relating to the reduction of its maintenance department work force; that petition made no reference to picket-line misconduct of terminated employees.

The Respondent's petition to reopen the record was denied (138 NLRB 550, footnote 2) on the grounds that the matter was one "more properly treated at the compliance stage of the proceedings." The Respondent contends that had it moved that the record be reopened to present evidence that certain

^{38/} In view of this fact, the Respondent's contention that this case should be contrasted to cases arising under Section 8(a)(1) and 8(a)(3) appears to be without substance.

^{39/} The Alameda County Superior Court issued its findings of fact and conclusions of law on October 7, 1959 (the decision and judgment were not rendered by the Court until December 2, 1959), which was before the parties had filed briefs with the Trial Examiner in the unfair labor practice proceeding. However, the Respondent did not raise the issue of picket-line misconduct in its brief to the Trial Examiner, request that the Court's findings be made part of the record, or request that the record be reopened to receive evidence in this matter.

- 24 employees had disqualified themselves from reinstatement and backpay the Board's answer would have been the same. The Respondent would thus equate the diminution of jobs, wage rates, and failure to exercise due diligence in seeking other work during the backpay period with the issue of disqualification for misconduct or "cause". We do not agree with the Respondent's contention, for the former issues are properly matters for compliance in that they go to the issue of the amount of Respondent's liability or damages, whereas the latter issue goes to the remedy itself (the right to reinstatement).^{40/}

Moreover, the Respondent fails to consider that unlike the defense of disqualification for misconduct, the question of diminution of jobs cannot be considered with any finality until an offer to reinstate has been made and accepted, and the backpay period is thereby established. The issue of disqualification for misconduct, however, can be determined with finality in the original proceeding (providing the facts were then known) and is not dependent on the establishment of the backpay period, or the changing nature of Respondent's business. Thus, the issue of employee misconduct ("cause") which warrants forfeiture of backpay and reinstatement goes to the remedy and not to the issue of compliance with the remedy.

^{40/} For example, if the defense of diminution of jobs is raised, the right to reinstatement and backpay of the employee involved is not in question, rather, the issue is whether the Respondent is able to comply (i.e., whether the employee's former or a substantially equivalent position is available). If an employee's position is at first unavailable but later becomes available, the employee remains entitled to it. On the other hand, when an employee is denied reinstatement and backpay for "cause" (misconduct) he has no right to reinstatement or backpay whether his former position is available or not. In this connection see John F. Cuneo Co., 152 NLRB 929, where the Trial Examiner found that an employee had been unlawfully discharged but refused to receive the Respondent's evidence attempting to prove that reinstatement should be denied because the employee had disqualified himself for reinstatement. The Board affirmed the finding that the discharge was unlawful, but remanded the proceeding to the Trial Examiner for determination of the employee's suitability for reinstatement because the determination of that issue at the unfair labor practice hearing was material to the appropriateness of the usual remedy of reinstatement and backpay. See also L. Posner, Inc., 133 NLRB 1567, footnote 1.

25 We must also consider the effect, if any, of the Court's decree enforcing the Board's order.^{41/} Although we have found no case directly in point, an examination of the cases indicates that the courts look with disfavor on belated attempts to assert misconduct defenses to the reinstatement remedy as opposed to defenses which go to the amount of the Respondent's backpay liability which the courts consider to be questions within the Board's special competence.^{42/}

In N.L.R.B. v. Mastro Plastics Corporation, 261 F.2d 147, (C.A. 2), the employer, which had been ordered to reinstate a number of unlawfully discharged employees, refused to reinstate one of them because she had been convicted of disorderly conduct on the picket-line, both the conduct and the conviction having occurred before the unfair labor practice hearing. The Second Circuit held (at 148):

Although the discharge and reinstatement of these employees were the 'central' issues in dispute, Mastro never asserted the improper conduct of Yolanda Flamio or her disorderly conduct convictions as a ground for not reinstating her. No valid reason has been offered by respondents to excuse their failure to raise the conviction issue before the Trial Examiner. Their failure to assert the conviction before the Board would itself have precluded them from asserting it here in 1954, 29 U.S.C.A. [Section] 160 (e), and necessarily prevents such assertion now.

^{41/} The Board's Supplemental Decision and Order was upheld by both the Court of Appeals for the D.C. Circuit (322 F.2d 411) and the Supreme Court (379 U.S. 203). The Supreme Court held that the Board's Order was within its power to fashion remedies, "... when the loss of employment stems directly from an unfair labor practice as in the case at hand." The Board's order is clear and unequivocal as to reinstatement:

"The ... Board orders that ... Fibreboard ... offer to those employees /represented by the Union/ immediate and full reinstatement to their former or substantially equivalent positions....."

^{42/} See N.L.R.B. v. Kohler Co. 351 F.2d 798 at 801, (C.A. D.C.). See also Wallace Corp. v. N.L.R.B. 159 F.2d 952 (C.A. 4); N.L.R.B. v. Bird Machine Co., 174 F.2d 404 (C.A. 1).

- 26 Mastro was adjudged guilty of contempt and required to offer
reinstatement to the employee to purge itself.^{43/}

Likewise, the Fifth Circuit declined to remand a case to the Board to consider evidence of alleged union misconduct during a strike (which conduct had been raised as a defense to the unfair labor practice), on the issue of reinstatement of strikers, because there had been, "... no proper offer of specific and relevant proof on the reinstatement issue," at the unfair labor practice hearing to show the strikers were engaged in such misconduct. The Board's order was enforced.^{44/}

It therefore appears that the Court decree enforcing the Board's order that the terminated machinists be offered reinstatement precludes our consideration of the misconduct defense at this stage of the proceeding.

^{43/} The Respondent would distinguish Mastro Plastics since the contempt convictions, in the instant case, were not handed down until more than 2 months after the close of the unfair labor practice hearing. In our opinion this alleged distinction is without merit, for as the court pointed out, "Mastro never asserted the improper conduct ... or her disorderly conduct conviction as a ground for not reinstating her." [emphasis added]. The court's language indicates that the defense would not have been barred if either the improper conduct or the conviction had been asserted in the original proceeding. Moreover, it should be noted that both the Board and the courts have indicated that a contempt conviction for violation of a state court injunction is not controlling or dispositive on the question of whether employees should be reinstated. (see N.L.R.B. v. Cambria Clay Products Co., 215 F.2d 48, (C.A. 6); J.H. Rutter-Rex Mfg. Co., Inc., 158 NLRB 1414 at 1419 footnote 8).
^{44/} N.L.R.B. v. Lambert, d/b/a Sue-Ann Mfg. Co., 211 F.2d 91 (C.A. 5). The Respondent, however, citing Elmira Machine and Specialty Works, Inc., 148 NLRB 1695, contends that if the Board finds the misconduct defense barred, its finding will be contrary to its own precedent.

In our opinion, Elmira is distinguishable from the instant case on at least 2 grounds: First, there is no indication that the impropriety of considering misconduct of reinstated employees in the backpay proceeding was asserted; neither the General Counsel nor the union filed exceptions to the Trial Examiner's Supplemental Decision. Therefore, the Board did not pass on the issue.

Secondly, in Elmira there was not an intervening Court decree enforcing the Board's reinstatement order as in the instant case.

The Respondent could have raised the alleged misconduct at the hearing held on September 21 and 22, 1959, just a month after the alleged occurrence. Respondent could have petitioned the Board to reopen the record to receive the evidence at any time up to the presentation of the case to the Court of Appeals, as provided in Section 10(c) of the Act. Likewise, at any time before the Court of Appeals decision on July 3, 1963, Respondent could have applied for a remand to the Board to hear this evidence, pursuant to Section 10(c) of the Act. In our opinion, the misconduct defense based on facts of which the Respondent had knowledge in August 1959, has been raised too late to be now considered by the Board as a ground for barring reinstatement and cannot be asserted as a bar in this backpay proceeding, the purpose of which is to determine the amounts of backpay due Arca, Beck, Olson^{45/} and the other terminated machinists.

Justice Frankfurter, in N.L.R.B. v. Donnelly Garment Co., 330 U.S. 219, succinctly stated the principle involved:

Due process does not afford a party the right to treat as a dress rehearsal a hearing on the issues for which the hearing was adequate. And the Wagner Act does not require that ground be covered a second time, or piecemeal.

^{45/} Olson was not offered reinstatement by Respondent. The Trial Examiner computed Olson's backpay to June 30, 1967, apparently the date upon which the Trial Examiner thought Olson's job was eliminated. However, the parties stipulated that Olson's job was eliminated on October 21, 1967, and not June 30. Accordingly, we have computed Olson's backpay to the date his job was eliminated, October 21, 1967.

- 28 Accordingly, we find that backpay claimants Arca^{46/} and Beck are entitled to reinstatement.^{47/}

(9) Certain terminated machinists^{48/} elected to take early retirement benefits (also referred to as pension benefits) on August 1, 1959. These employees received monthly retirement benefits during the hiatus period as well as the backpay period. The Trial Examiner found that the early retirement benefits paid during the hiatus period as well as during the backpay period be deducted from gross backpay.

The General Counsel and the Union except to the Trial Examiner's finding, contending that although early retirement benefits paid during

46/ The General Counsel contends, and we agree, that the backpay period for Arca and Beck still continues and will continue until such time as the Respondent extends to them an adequate offer of reinstatement.

The Trial Examiner erroneously found that there was no dispute as to the average base-period quarterly earnings of the machinists since there is such a dispute with respect to the average quarterly earnings of David Arca. Arca was on leave of absence to attend to union business for 8.8 weeks during the base period (August 4, 1958 to July 31, 1959). The General Counsel, as he did with all other employees who did not work a full year during the base period, projected Arca's average quarterly earnings during a full year. He arrived at average quarterly earnings of \$2,045.19 for Arca. The Respondent, although it conceded the correctness of such projections made as to other employees, objects to such a projection in the case of Arca. We find the method employed by the General Counsel to be a reasonable means for determining average base-period quarterly earnings, and that it is just as reasonable for Arca as it is for the other employees. We have, therefore, calculated Arca's backpay on the basis of \$2,045.19 average base-period quarterly earnings.

47/ Contrary to the General Counsel's contention, we find that the hourly wage rates set forth in the collective bargaining agreement between the Respondent and the Union, effective July 15, 1965, retroactive to March 22, 1965, and not the "Pabco formula" should be applied in computing the backpay of Arca, Beck and Olson after March 22, 1965.

48/ Bennett, Capps, Crispino, Fuller, Gronberg, Hamidy, Hughes, E.T. Johnson, J.P. Johnson, Lowell, Nash, and Smith.

29 the backpay period may constitute a valid deduction against backpay owed, the same is not true with respect to the early retirement benefits paid during the hiatus period. We find merit in this contention.

It was uncontested that these employees would not have elected to take early retirement benefits except for their unlawful termination. We also note that under the terms of the retirement plan, the early retirement benefits were not paid by the Respondent but by the Retirement Fund itself. Moreover, an undetermined part of the early retirement benefits paid represents the employees' own contributions to the Retirement Fund made over a period of years. Thus, it appears that having met the requirements for early retirement benefits, the employees were entitled to these benefits as a matter of right.

The purpose of the backpay remedy is to make unlawfully terminated employees whole. Interim "earnings" (if the retirement benefits are considered earnings - if not, they are clearly not deductible) from whatever sources are deducted from backpay because otherwise unlawfully terminated employees would be made more than whole or receive a windfall. Since backpay did not accrue during the hiatus period, under the Board's quarterly method of determining backpay owing,^{49/} early retirement benefits received in that period should not be deducted from backpay which accrued after the hiatus period. Accordingly, we have not allowed the early retirement benefits paid during the hiatus period as a deduction against backpay.

(10) Finally, we turn to a discussion of our understanding of the Respondent's retirement plan and how it will be applied with respect to the backpay claimants. The Plan operates as follows:

^{49/} Under the Board's quarterly method of determining backpay owing, interim earnings received in one quarter are not deducted from backpay accrued in another quarter. (see F.W. Woolworth Co., 90 NLRB 289).

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The employees' contributions (by payroll deductions) to the Plan are determined by the amount of their earnings. In addition, the Respondent contributes those amounts which are actuarially determined to be necessary so that when added to the employees' contributions, they will assure an adequate fund from which to pay retirement and death benefits called for in the Plan. Upon retirement an employee receives a monthly income drawn from the past and current service benefits (provided by the employer's and employees' contributions) which have accrued to his account. A member of the Plan whose employment is terminated and who has completed 20 years of service and attained age 55 can elect to continue as a participant in the Plan and receive a retirement income either immediately or after age 65. Alternatively, a terminated employee who does not meet the foregoing requisites receives a refund, with interest, of his deposits.

The Trial Examiner found and we agree that although the terminated employees are not entitled to current service benefits during the hiatus period, they are entitled to be treated as having been in service for that period. Thus, the hiatus period would not be considered a break in service and the rights of the backpay claimants would be enhanced under the provisions of the Plan which make length of service a factor to be considered. Among these are length of service prerequisite to participation in the Plan (Section 6(b)), guaranteed minimum retirement income (Section 13(a)), amount of death benefit (Section 14), and vesting (Section 15).

The Union and the General Counsel contend that if Respondent is not liable for contributions to the Plan during the hiatus period as found by the Trial Examiner (a finding we adopt), the Respondent should be liable for contributions during the backpay period, and should at each employee's option pay these contributions either to the retirement fund or directly to the employee. We do not agree, because affording the employees such

31 an option would be contrary to the express provisions of the Plan which provides that prior to retirement an employee's interest in the fund is vested only to the extent of his own deposits.

What is required by the Board's order is that the terminated employees be treated as having been employed during the backpay period during which time both the employees and the Respondent would have made contributions to the Plan. If they would have retired during this period or become eligible for early retirement (20 years service and age 55) during this period, they are entitled to elect to receive retirement income or their deposits.

At the time of their termination each of the machinists who did not elect or was ineligible for early retirement or terminated vested status (by which retirement benefits are deferred to age 65) was refunded his Retirement Plan deposits. In order to participate now in the Plan, assuming eligibility (length of service and age) it would be necessary for a terminated employee to pay back to Respondent the deposits refunded in 1959 along with deposits (employee contributions) owing on the amount he would have received as wages from Respondent during the backpay period. The Trial Examiner felt that these deductions should not be made from backpay unless the men were first given the option of continuing in the Plan and for this reason he did not deduct the deposits refunded in 1959 or the employees' deposits due on backpay. We agree.

The Respondent contends that only the employees who accepted reinstatement ^{50/} are eligible to make this election. We do not agree. For, we are of the opinion that any employee awarded backpay who meets the

50/ These are: Cruze, Bradford, Lippert, Homen, Longnecker, Price, Raineri, Reihl, Swisher, Weismiller, and Novacek. Of these, Homen and Swisher were not awarded backpay because their jobs were eliminated.

- 32 length of service requirement (assuming he also meets the age requirement) by virtue of the hiatus and backpay period, whether he accepted reinstatement or not, should be offered the opportunity to continue in the Plan, and we so find.

Certain employees took early retirement benefits upon termination ^{51/} in 1959; none of them accepted reinstatement. The Respondent agrees that the monthly retirement benefits of those terminated machinists who elected to take early retirement benefits and are entitled to backpay should be recalculated based on the amount of employee and employer contributions which would have accrued during the backpay period. ^{52/} We have found that the early retirement benefits received by these employees should be deducted for the period that they were entitled to backpay. In addition, the Respondent should be credited with the amounts these employees would have contributed to the Plan during the backpay period. Therefore, the amounts for early retirement and pension deposits for these employees have been ^{53/} deducted. These are set forth in the Appendix to this decision.

^{51/} These men were Bennett, Capps, Crispino, Fuller, Gronberg, Hamidy, Hughes, E.T. Johnson, J.P. Johnson, Lowell, Nash, and Smith. Of these Nash, Crispino, Hamidy, Bennett, Lowell, Hughes, and E.T. Johnson were eligible to receive backpay.

^{52/} In addition, Cruze and F.C. Johnson, who deferred their pension benefits to age 65, are entitled to have their monthly pension recalculated upon payment of employees' pension contributions due on backpay.

^{53/} The Appendix also includes the computations utilized in determining the amount of backpay to be awarded to individual employees in each instance where our computations differ from those set forth in Appendix B-2 of the General Counsel's Backpay Specification. Among the reasons which made it necessary to modify some of the General Counsel's computations are: the correction of mathematical errors; the General Counsel computed backpay through December 31, 1962, for all of the 7 employees whose compulsory retirement dates were disputed; the General Counsel computed the backpay of Arca, Beck, and Olson by means of the "Pabco formula" wage rates after March 22, 1965, instead of the rates set forth in the July 15, 1965, collective bargaining agreement between Respondent and the Union which was retroactive to March 22, 1965; certain employees were not eligible for backpay during the entire backpay period but only from dates that jobs became available due to the disability or retirement of other backpay claimants; and in one instance (Griffin) the General Counsel's computations provide backpay through January 31, 1964, though it was agreed his job would have been eliminated on January 15, 1964.

33 Finally, we agree with the Respondent's contention that no provision need be made with respect to its responsibility to make contributions to the Plan for wages accruing during the backpay period to those employees who elect to continue in the Plan, or those employees who are entitled to have their pension benefits recalculated. For as the Respondent points out "these contributions will follow automatically from the Company's responsibility to keep the fund actuarially sound." We therefore assume that these contributions will be provided under the express provisions of the plan.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Fibreboard Paper Products Corporation, its officers, agents, successors, and assigns shall make the employees involved in this proceeding whole by payment to them in the following amounts:

<u>Name</u>	<u>Back Pay Due</u>
<u>Machinists</u>	
1. <u>Nash, Lloyd J.</u> (see Appendix)	\$1,272.71
2. <u>Jackson, Warren C.</u>	8,217.48
3. <u>Beck, Lincoln E.</u> (see Appendix)	27,850.39
4. <u>Wittorff, Detliff C.</u>	5,529.70
5. <u>Crispino, Manuel</u> (see Appendix)	318.57
6. <u>Hamidy, Robert</u> (see Appendix)	1,722.49
7. <u>Cruze, Joseph S.</u>	10,752.27
8. <u>Johnson, Fred Clarence</u>	19,293.91
9. <u>Schlotterbeck, Eugene</u>	9,782.66
10. <u>Bennett, Florin F.</u> (see Appendix)	62.96
11. <u>Schoenfeld, Milton H.</u> (see Appendix)	5,546.32
12. <u>Arca, David</u> (see Appendix)	6,704.69
13. <u>Goranson, George W.</u>	4,830.68
14. <u>Jensen, Raymond D.</u>	16,792.36
15. <u>Longnecker, Joe E.</u>	8,906.63
16. <u>Bradford, Harry C.</u>	8,062.19
17. <u>Fusare, Alex J.</u>	8,661.34
18. <u>Price, Joe</u>	22,230.90
19. <u>Cunningham, Harry L.</u>	12,093.51
20. <u>Raineri, Louis C.</u>	21,688.93

	<u>Name</u>	<u>Back Pay Due</u>
<u>Machinists</u>		
21.	<u>Reihl, William W.</u>	\$6,671.27
22.	<u>O'Leary, Vincent John</u> 54/	7,986.24
23.	<u>Fontes, Clifford L.</u> 55/	3,086.78
24.	<u>Lippert, Donald W.</u> 56/	8,895.02
25.	<u>Vanderbeck, Joseph P.</u> 57/ (see Appendix)	6,691.99
26.	<u>Weismiller, Jr. Gerald</u> 58/ (see Appendix)	3,575.64

	<u>Power House Emolvees</u>	
27.	<u>Lowell, Fredric Lincoln</u> (see Appendix)	\$ 5,851.83
28.	<u>Hughes, Robert Edgar</u> (see Appendix)	18,082.36
29.	<u>Haueter, Herbert F.</u>	11,044.87
30.	<u>Johns, Elmer L.</u> (see Appendix)	18,305.72
31.	<u>Novacek, George R.</u>	7,326.95
32.	<u>Olson, Carl W.</u> (see Appendix)	12,615.70
33.	<u>Giffin, John L.</u> (see Appendix)	3,209.82
34.	<u>Mann, Eugene G.</u>	7,819.12
35.	<u>Van Zoen, Jaccue J.</u>	3,892.18
36.	<u>Wall, James R.</u>	5,555.77
		<u>\$330,931.95</u>

54/ The opening for O'Leary was created by the fact that Crispino was disabled from prior to the commencement of the backpay period until his compulsory retirement date (10/1/62).

55/ The opening for Fontes was created by the fact that Bennett was disabled from prior to the commencement of the backpay period until his compulsory retirement date (12/1/62).

56/ The opening for Lippert was created by the fact that Cruze was disabled from prior to the commencement of the backpay period until Hamidy's retirement date (12/1/62). Thus, Lippert would have replaced Cruze from 9/14/62 to 12/1/62 and Hamidy thereafter.

57/ The opening for Vanderbeck was created by Cruze's continued disability from 12/1/62 (Hamidy's retirement date) until 4/1/63, Wittorff's retirement date. Thus, Vanderbeck would have replaced Lippert (who replaced Cruze from 9/14/62 to 12/1/62 and then Hamidy, whose retirement date was 12/1/62) for the disabled Cruze from 12/1/62 to 4/1/63 and then Wittorff whose retirement date was 4/1/63 for the remainder of the backpay period.

58/ The first opening for Weismiller was created by Cruze's continued disability from 4/1/63 (the date Vanderbeck would have become eligible for the retiring Wittorff's job) to 4/15/63 when Cruze would have returned to work. The second opening was created when Nash reached his compulsory retirement date on 3/1/64.

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With respect to those employees whose backpay is still accruing, ^{59/} as found herein, payment to them of the amount found to be due and accruing constitutes satisfaction of Respondent's obligation only up to the date set forth in the Appendix, which is the end of the period covered by the backpay specification.

Dated, Washington, D.C. DEC 15 1969

Frank W. McCulloch, Chairman

John H. Fanning, Member

Sam Zagoria, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

59/ David Arca and Lincoln Beck.

APPENDIX

Machinists

NASH, Lloyd J.

Compulsory retirement date March 1, 1964.

<u>Year & Quarter</u>	<u>Gross Back Pay</u>	<u>Net Interim Earnings</u>	<u>Net Back Pay</u>	<u>Medical Expenses</u>
1962-3	443.54	314.97	128.57	6.43
1962-4	2,334.43	1,910.75	423.68	34.80
1963-1	2,334.43	1,889.15	445.28	38.10
1963-2	2,334.43	1,970.35	364.08	38.10
1963-3	2,418.10	2,120.01	298.09	38.10
1963-4	2,459.95	1,873.55	586.40	38.10
1964-1	1,639.96	1,331.17	308.79	26.60
TOTALS	\$13,964.84	\$11,409.95	\$2,554.89	\$220.23

Total Net Quarterly Backpay	2,554.89
Medical Expense	220.23
Net Back Pay ^{1/}	2775.12
Early Retirement Benefits	1092.17
^{2/}	1682.95
Pension Deposits	410.24
Total Backpay	\$1272.71

- ^{1/} Less early retirement benefits received during backpay period.
^{2/} Less employees pension deposits on backpay. This backpay claimant is entitled to have his monthly pension benefit recalculated.

BECK, Lincoln E.

<u>Year & Quarter</u>	<u>Gross Back Pay</u>	<u>Net Interim Earnings</u>	<u>Net Back Pay</u>	<u>Medical Expenses</u>
1962-3	469.75	218.33	251.42	2.10
1962-4	2,472.37	1,310.92	1,161.45	12.60
1963-1	2,472.37	474.82	1,997.55	14.25
1963-2	2,472.37	474.82	1,997.55	14.25
1963-3	2,560.97	474.82	2,086.15	14.25
1963-4	2,605.30	474.82	2,130.48	14.25
1964-1	2,605.30	284.69	2,320.61	14.25
1964-2	2,605.30	284.69	2,320.61	14.25
1964-3	2,605.30	284.69	2,320.61	14.25
1964-4	2,605.30	284.69	2,320.61	14.25
* 1965-1	2572.94	1,188.16	1,384.78	14.25
1965-2	2,313.77	1,188.17	1,125.60	14.25
1965-3	2,313.77	1,188.16	1,125.61	14.25
1965-4	2,313.77	1,183.17	1,125.60	14.25
1966-1	2,313.77	1,656.46	657.31	14.25
1966-2	2,313.77	1,656.46	657.31	14.25
1966-3	2,367.49	1,656.46	711.03	14.25
1966-4	2,376.96	1,656.47	720.49	14.25
1967-1	2,376.96	1,794.75	582.21	14.25
1967-2	2,376.96	1,794.75	582.21	14.25
TOTALS	\$47,114.49	\$19,535.30	\$27,579.19	\$271.20

Total Net Quarterly Back Pay	27,579.19
Medical Expense	271.20
Total Backpay as of 6/30/67	<u>\$27,850.39</u>

NOTE: Backpay period not yet ended, as Beck has not yet received offer of reinstatement.

* Backpay from 3/22/65 computed on basis of rates included in collective-bargaining agreement between Respondent and the Union effective July 15, 1965, retroactive to March 22, 1965.

CRISPINO, Manuel

Disabled until compulsory retirement date on October 1, 1962.

<u>Year & Quarter</u>	<u>Gross Back Pay</u>	<u>Net Interim Earnings</u>	<u>Net Back Pay</u>	<u>Medical Expenses</u>
1962-3	376.20	0.00	376.20	3.95
TOTALS	<u>\$376.20</u>	<u>0.00</u>	<u>\$376.20</u>	<u>\$3.95</u>

Total Net Quarterly Back Pay	376.20
Medical Expense	3.95
Net Back Pay <u>1/</u>	<u>380.15</u>
Early Retirement Benefits	54.06
<u>2/</u>	<u>326.09</u>
Pension Deposits	7.52
Total Back Pay	<u>\$318.57</u>

* Straight-time pay at \$4.275 per hour under Respondent's salary plan during period of disability.

HAMILTY, Robert

<u>Year & Quarter</u>	<u>Gross Back Pay</u>	<u>Net Interim Earnings</u>	<u>Net Back Pay</u>	<u>Medical Expenses</u>
1962-3	424.99	0.00	424.99	6.75
1962-4	1490.20	0.00	1490.20	40.50
TOTALS	<u>\$1915.19</u>	<u>\$ 0.00</u>	<u>\$1915.19</u>	<u>\$47.25</u>

Total Net Quarterly Back Pay	1915.19
Medical Expense	47.25
Net Back Pay <u>1/</u>	<u>1962.44</u>
Early Retirement Benefits	201.65
<u>2/</u>	<u>1760.79</u>
Pension Deposits	38.30
Total Back Pay	<u>\$1722.49</u>

1/ Less early retirement benefits received during backpay period.

2/ Less employees pension deposits on backpay. This backpay claimant is entitled to have his monthly pension benefit recalculated.

BENNETT, Florin F.

Disabled until compulsory retirement date December 1, 1962.

<u>Year & Quarter</u>	<u>Gross Back Pay</u>	<u>Net Interim Earnings</u>	<u>Net Back Pay</u>	<u>Medical Expenses</u>
1962-3	239.40 [*] /	0.00	239.40	5.27
1962-4	0.00	0.00	0.00	17.70
TOTALS	<u>\$239.40</u>	<u>\$0.00</u>	<u>\$239.40</u>	<u>\$22.97</u>

Total Net Quarterly Back Pay	239.40
Medical Expense	<u>22.97</u>
Net Back Pay ^{1/}	262.37
Early Retirement Benefits	<u>194.62</u>
^{2/}	<u>67.75</u>
Pension Deposits	<u>4.79</u>
Total Back Pay	<u>\$62.96</u>

* Represents seven work days from September 13 to September 22, 1962 at \$4.275 per hour.

- 1/ Less early retirement benefits received during backpay period.
2/ Less employees pension deposits on backpay. This backpay claimant is entitled to have his monthly pension benefit recalculated.

SCHOENFELD, Milton H.

<u>Year & Quarter</u>	<u>Gross Back Pay</u>	<u>Net Interim Earnings</u>	<u>Net Back Pay</u>	<u>Medical Expenses</u>
1962-3	432.08	298.97	133.11	4.92
1962-4	2274.11	1794.75	479.36	26.62
1963-1	2274.11	1794.75	479.36	27.62
1963-2	2274.11	1794.75	479.36	29.87
1963-3	2355.62	1794.75	560.87	29.12
1963-4	2396.38	1794.75	601.63	29.12
1964-1	2396.38	1794.75	601.63	27.62
1964-2	2396.38	1794.75	601.63	30.87
1964-3	2396.38	1794.75	601.63	26.62
1964-4	2396.38	1794.75	601.63	26.62
1965-1	463.82	322.03	141.79	5.32
TOTALS	\$22,055.75	\$16,773.75	\$5282.00	\$264.32
Total Net Quarterly Back Pay				\$5282.00
Medical Expense				264.32
Total Back Pay				\$5546.32

ARCA, David

<u>Year & Quarter</u>	<u>Gross Back Pay</u>	<u>Net Interim Earnings</u>	<u>Net Back Pay</u>	<u>Medical Expenses</u>
1962-3	471.28	291.49	179.79	0.00
1962-4	2,480.41	1,981.04	499.37	0.00
1963-1	2,480.41	2,951.41	0.00	0.00
1963-2	2,480.41	2,069.61	410.80	0.00
1963-3	2,569.32	2,069.61	499.71	0.00
1963-4	2,613.77	3,263.58	0.00	0.00
1964-1	2,613.77	2,099.41	514.36	0.00
1964-2	2,613.77	2,154.88	458.89	0.00
1964-3	2,613.77	2,127.94	485.83	0.00
1964-4	2,613.77	2,387.77	226.00	0.00
* 1965-1	2,581.30	2,025.78	555.52	0.00
1965-2	2,321.29	2,453.66	0.00	0.00
1965-3	2,321.29	2,243.25	74.08	0.00
1965-4	2,321.29	2,742.85	0.00	0.00
1966-1	2,321.29	2,700.00	0.00	0.00
1966-2	2,321.29	2,925.00	0.00	0.00
1966-3	2,375.18	2,925.00	0.00	0.00
1966-4	2,384.69	398.00	1,986.69	0.00
1967-1	2,384.69	1,575.00	809.69	0.00
1967-2	2,384.69	2,730.00	0.00	0.00
TOTALS	\$47,267.68	\$44,115.28	\$6,704.69	\$ 0.00

Total Net Quarterly Back Pay \$6,704.69
 Medical Expense 0.00

Total Back Pay as of 6/30/67 \$6,704.69

NOTE: Backpay period not yet ended, as Arca has not yet received offer of reinstatement.

* Backpay beginning March 22, 1965, computed on basis of rates included in collective-bargaining agreement between Respondent and the Union effective July 15, 1965, retroactive to March 22, 1965.

VANDERBECK, Joseph P.

<u>Year & Quarter</u>	<u>Gross Back Pay</u>	<u>Net Interim Earnings</u>	<u>Net Back Pay</u>	<u>Medical Expenses</u>
* 1962-4	918.56	597.31	321.25	0.00
1963-1	2701.66	2078.88	622.78	0.00
1963-2	2701.66	1756.80	944.86	0.00
1963-3	2798.48	2274.80	523.68	0.00
1963-4	2846.92	2018.20	828.72	0.00
1964-1	2846.92	2150.40	696.52	0.00
1964-2	2846.92	1855.20	991.72	0.00
1964-3	2846.92	2234.40	612.52	0.00
1964-4	2846.92	1915.20	931.72	0.00
1965-1	551.02	332.80	218.22	0.00
TOTALS	\$23905.98	\$17,213.99	\$6,696.99	0.00

Total Net-Quarterly Back Pay	6691.99
Medical Expense	0.00
Total Back Pay	\$6691.99

* The opening for Vanderbeck was created by Cruze's continued disability from 12/1/62 (Hamidy's retirement date), until 4/1/63, Wittorff's retirement date.

WEISMILLER, JR., Gerald

(Reinstated)

<u>Year & Quarter</u>	<u>Gross Back Pay</u>	<u>Net Interim Earnings</u>	<u>Net Back Pay</u>	<u>Medical Expenses</u>
1963-2 *	461.71	294.43	167.28	1.50
1964-1 **	973.08	775.73	197.35	3.19
1964-2	2,861.99	1,944.75	917.24	9.39
1964-3	2,861.99	1,997.92	864.07	9.39
1964-4	2,861.99	1,697.02	1,164.97	9.39
1965-1	553.94	323.95	229.99	1.88
TOTALS	\$10,574.70	\$7,033.80	\$3540.90	\$34.74

Total Net Quarterly Back Pay	3540.90
Medical Expense	34.74
Total Back Pay	\$3575.64

* The first opening for Weismiller was created by Cruze's continued disability from 4/1/63 (The date Vanderbeck would have become eligible for the retiring Wittorff's slot) to 4/15/63 and was terminated by Cruze's return to work.

** The second opening was created when Nash reached his compulsory retirement date on 3/1/64.

Power House Employees

LOWELL, Fredric Lincoln

<u>Year & Quarter</u>	<u>Gross Back Pay</u>	<u>Net Interim Earnings</u>	<u>Net Back Pay</u>	<u>Medical Expenses</u>
1962-3	540.90	298.97	241.93	0.00
1962-4	2846.83	2012.99	833.84	0.00
1963-1	2846.83	2434.05	412.78	0.00
1963-2	2846.83	1962.35	884.48	0.00
1963-3	2948.86	2082.06	866.80	0.00
1963-4	2999.90	2002.93	996.97	0.00
1964-1	2999.90	2076.03	923.87	0.00
1964-2	2999.90	1989.39	1010.51	177.60
1964-3	2999.90	2079.39	920.51	0.00
1964-4	2999.90	2022.75	977.15	0.00
1965-1	580.63	422.76	157.87	0.00
TOTALS	\$ 27,610.38	\$ 19,383.67	\$8226.71	\$177.60
Total Net Quarterly Back Pay				8226.71
Medical Expense				177.60
Net Back Pay <u>1/</u>				8404.31
Early Retirement Benefits				1639.68
<u>2/</u>				6764.63
Pension Deposits				912.80
Total Back				\$ 5851.83

HUGHES, Robert Edgar

Compulsory retirement date 10/1/64.

<u>Year & Quarter</u>	<u>Gross Back Pay</u>	<u>Net Interim Earnings</u>	<u>Net Back Pay</u>	<u>Medical Expenses</u>
1962-3	543.66	131.67	411.99	5.07
1962-4	2861.35	693.18	2168.17	27.45
1963-1	2861.35	650.57	2210.78	27.45
1963-2	2861.35	650.57	2210.78	27.45
1963-3	2963.90	650.57	2313.33	27.45
1963-4	3015.20	650.57	2364.63	27.45
1964-1	3015.20	334.51	2680.69	27.45
1964-2	3015.20	334.51	2680.69	224.95
1964-3	3015.20	334.51	2680.69	27.45
TOTALS	\$24,152.41	\$4,430.66	\$ 19,721.75	\$422.17
Total Net Quarterly Back Pay				19,721.75
Medical Expense				422.17
Net Back Pay <u>1/</u>				20,143.92
Early Retirement Benefits				1,275.47
<u>2/</u>				18,868.45
Pension Deposits				786.09
Total Back Pay				\$18,082.36

1/ Less early retirement benefits received during backpay period.2/ Less employees pension deposits on backpay. This backpay claimant is entitled to have his monthly pension benefit recalculated.

JOHNSON, Elmer T.

<u>Year & Quarter</u>	<u>Gross Back Pay</u>	<u>Net Interim Earnings</u>	<u>Net Back Pay</u>	<u>Medical Expenses</u>
1962-3	509.55	166.85	342.70	7.69
1962-4	2681.83	878.31	1803.52	39.10
1963-1	2681.83	752.99	1928.84	39.10
1963-2	2681.83	752.99	1928.84	39.10
1963-3	2777.94	752.99	2024.95	39.10
1963-4	2826.03	752.99	2073.04	39.10
1964-1	2826.03	476.42	2349.61	39.10
1964-2	2826.03	476.42	2349.61	39.10
1964-3	2826.03	476.42	2349.61	39.10
1964-4	2826.03	476.42	2349.61	39.10
1965-1	546.98	95.29	451.69	7.82
 TOTALS	 \$26,010.11	 \$6058.09	 \$19,952.02	 \$367.41

Total Net Quarterly Back Pay	19,952.02
Medical Expense	367.41
Net Back Pay <u>1/</u>	20,319.43
Early Retirement Benefits	1,164.24
<u>2/</u>	19,155.19
Pension Deposits	849.47
Total Back Pay	\$18,305.72

1/ Less early retirement benefits received during backpay period.

2/ Less employees pension deposits on backpay. This backpay claimant is entitled to have his monthly pension benefit recalculated.

OLSON, Carl W.

<u>Year & Quarter</u>	<u>Gross Back Pay</u>	<u>Net Interim Earnings</u>	<u>Net Back Pay</u>	<u>Medical Expenses</u>
1962-3	523.93	280.66	243.27	0.00
1962-4	2,757.51	1,540.18	1,217.33	0.00
1963-1	2,757.51	1,574.32	1,183.19	0.00
1963-2	2,757.51	1,853.77	903.74	0.00
1963-3	2,856.34	1,844.29	1,012.05	0.00
1963-4	2,905.77	1,565.20	1,340.57	0.00
* 1964-1	484.39	271.09	213.20	0.00
1964-4	2,905.77	1,859.38	1,046.39	0.00
** 1965-1	2,869.68	2,397.29	472.39	0.00
1965-2	2,580.62	2,397.29	183.33	0.00
1965-3	2,580.62	2,397.29	183.33	0.00
1965-4	2,580.62	2,397.29	183.33	0.00
1966-1	2,580.62	2,000.92	579.70	0.00
1966-2	2,580.62	2,000.92	579.70	0.00
1966-3	2,640.54	2,000.92	639.62	0.00
1966-4	2,651.10	2,000.92	650.18	0.00
1967-1	2,651.10	2,078.57	572.53	0.00
1967-2	2,651.10	2,078.57	572.53	0.00
1967-3	2,716.81	2,078.57	638.24	0.00
1967-4	627.53	426.55	200.98	0.00
TOTALS	\$47,659.69	\$35,043.99	\$12,615.70	0.00

Total Net Quarterly Back Pay	12,615.70
Medical Expense	0.00
Total Back Pay as of 6/30/67	\$12,615.70

NOTE: Backpay period ended October 21, 1967 upon elimination of his job. Not yet offered reinstatement.

* Job eliminated January 15, 1964 due to installation of automatic controls in power house. An opening was created for Olson on 10/1/64, the compulsory retirement date of Hughes.

** Backpay from 3/22/65 computed on basis of rates included in collective-bargaining agreement between Respondent and the Union effective July 15, 1965, retroactive to March 22, 1965.

GIFFIN, John L.

<u>Year & Quarter</u>	<u>Gross Back Pay</u>	<u>Net Interim Earnings</u>	<u>Net Back Pay</u>	<u>Medical Expenses</u>
1962-3	476.38	544.66	0.00	0.00
1962-4	2507.26	1478.45	1028.81	0.00
1963-1	2507.26	1602.72	904.54	0.00
1963-2	2507.26	1710.28	796.98	0.00
1963-3	2597.12	2117.63	479.49	0.00
1963-4	2642.07	3232.65	0.00	0.00
* 1964-1	435.41	512.64	0.00	0.00
 TOTALS	 \$13,672.76	 \$11,199.03	 \$3209.82	 0.00
		Total Net Quarterly Back Pay	3209.82	
		Medical Expense	0.00	
		Total Back Pay	\$3209.82	

* Job eliminated January 15, 1965, due to installation of automatic controls in power house.

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Twentieth Region

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In the Matter of:

FIBREBOARD PAPER PRODUCTS CORPORATION

-and-

EAST BAY UNION OF MACHINISTS, LOCAL 1304,
UNITED STEELWORKERS OF AMERICA, AFL-CIO;
and UNITED STEELWORKERS OF AMERICA,
AFL-CIO.Case No.
20-CA-1682

-----X

Room 18201, Federal Building
450 Golden Gate Avenue
San Francisco, California
October 16, 1967The above-entitled matter came on for pretrial conference
hearing, pursuant to notice, at 10:00 o'clock a.m.

BEFORE:

HENRY S. SAHM, Trial Examiner.

APPEARANCES:

WILLIAM F. ROCHE, ESQ., 450 Golden Gate Avenue, San
Francisco, California, appearing
as Counsel for the General
Counsel.DARWIN, ROSENTHAL
& LEFF,
by
IRWIN LEFF, ESQ., 68 Post Street, San Francisco,
California, appearing on behalf
of the Charging Party.BROBECK, PHLEGER
& HARRISON,
by
MARION B. PLANT, ESQ., 111 Sutter Street, San Francisco,
California, appearing on behalf
of the Respondent.

1 MR. PLANT: Yes.

2 Now, 6-A, that Exhibit B in Fibreboard's said answer to
3 the back page specification is a true and correct copy of the
4 Fibreboard retirement plan, which at the times mentioned in the
5 specification applied to employees in the bargaining unit
6 represented by the East Bay Union of Machinists.

7 MR. ROCHE: So stipulated.

8 MR. LEFF: So stipulated.

9 TRIAL EXAMINER: Noted and approved.

10 MR. PLANT: B, there is disagreement in part, at least,
11 to B.

12 MR. ROCHE: Mr. Plant, might I suggest that you phrase
13 that 6-B in terms that would exclude the seven men and then
14 we could have a stipulation on that?

15 MR. PLANT: Yes. Just a minute, now, until I find those
16 seven men.

17 B, that the compulsory retirement dates of certain of the
18 terminated employees, i.e., the dates upon which they were
19 required to retire by the terms of Section 7 of said Exhibit
20 B, fell prior to January 18th and were as set forth in
21 Schedule 1 of the appendix to said answer, except that there
22 disagreement as to Gronberg, Holmes, Hamidy, J. P. Johnson,
23 Florin F. Bennett, Crispino and Capps.

24 TRIAL EXAMINER: Gentlemen, would you please excuse me a
25 moment?

1 Off the record.

2 (Discussion off the record.)

3 TRIAL EXAMINER: On the record.

4 MR. PLANT: Continuing with the last paragraph, that with
5 respect to the men just named, the respective birthdates were
6 as follows:

7 Gronberg, January 5th, 1894.

8 Holmes, August 15th, 1895.

9 Crispino, September 14th, 1897.

10 Hamidy, November 27th, 1896.

11 J. P. Johnson, July 18th, 1894.

12 Bennett, November 10th, 1894 and D. F. Capps, May 25th,
13 1894.

14 MR. ROCHE: So stipulated.

15 MR. LEFF: So stipulated.

16 TRIAL EXAMINER: Noted and approved.

17 MR. PLANT: Now, Request No. 7 that the respective
18 seniority dates of the terminated employees were as set forth
19 in said Schedule 1, that is, Schedule 1 of the appendix to the
20 amended answer.

21 MR. ROCHE: So stipulated.

22 MR. LEFF: So stipulated.

23 TRIAL EXAMINER: Noted and approved.

24 MR. PLANT: 8-A, that M. Crispino, was physically dis-
25 abled from working -- let me pause just a second here because --

1 MR. LEFF: It is the same as your 19-A.

2 MR. PLANT: In my further request, I had some additional

3 MR. LEFF: The bottom of the first page.

4 MR. PLANT: Oh, yes.

5 That M. Crispino was physically disabled from working

6 from September 15th, 1962, until October 12th, 1963.

7 Do you want to take that?

8 MR. ROCHE: So stipulated.

9 MR. LEFF: So stipulated.

10 TRIAL EXAMINER: Noted and approved.

11 MR. PLANT: B, that J. Cruze was physically disabled from

12 working from September 10th, 1962, until April 15th, 1963.

13 MR. ROCHE: So stipulated.

14 MR. LEFF: So stipulated.

15 TRIAL EXAMINER: Noted and approved.

16 MR. PLANT: C, that F. Bennett was physically disabled

17 from working from June 22nd, 1962, until subsequent to January
18 18th, 1965.

19 MR. ROCHE: The General Counsel doesn't have any knowledge
20 here.

21 Couldn't we make it until January 1st, 1963?

22 MR. PLANT: That will do.

23 TRIAL EXAMINER: January 1st, 1963, very well.

24 MR. PLANT: The stipulation is so stipulated.

25 MR. LEFF: So stipulated as amended, the Union will

1 stipulate.

2 TRIAL EXAMINER: Very well. Noted and approved.

3 MR. PLANT: Next, the respective seniority date of the
4 terminated employees were as set forth in Schedule 1 of the
5 appendix to Fibreboard's amended answer that on which is the
6 same as the appendix to -- could we go off the record?

7 TRIAL EXAMINER: Yes.

8 Off the record.

9 (Discussion off the record.)

10 TRIAL EXAMINER: On the record.

11 MR. PLANT: Now, I think we can stipulate to the
12 following:

13 That the average quarterly earnings of each of the terminated
14 employees, including vacation earnings during the period from
15 August 4th, 1958 to July 3rd -- July 31st, 1959, were as set
16 forth in Appendix A to the specification, except that the
17 average quarterly earnings of George Novacek during such
18 period were -- what is that corrected figure?

19 MR. ROCHE: \$2,280.20.

20 MR. PLANT: And that there is dispute as to the average
21 quarterly earnings of Dave Arca.

22 MR. ROCHE: So stipulated.

23 MR. LEFF: So stipulated.

24 TRIAL EXAMINER: Noted and approved.

25 MR. PLANT: So to 10, there is a disagreement.

1 counsel.

2 MR. ROCHE: General Counsel would like to state that
3 we join in the position of Union counsel.

4 I accepted the stipulation as the stipulation, not with
5 any inferences that may be drawn from it.

6 TRIAL EXAMINER: Very well.

7 MR. PLANT: Now, do we have an agreement as to 12?

8 MR. LEFF: Yes, so stipulated.

9 MR. PLANT: I offer the stipulation that all times mentio

... 10 in the specification, Fibreboard employed in its felt mill
11 in the Emeryville plant a Millwright covered by contracts with
12 Local 6 of the International Longshoremens Union.

13 MR. ROCHE: So stipulated.

14 MR. LEFF: So stipulated.

15 TRIAL EXAMINER: Noted and approved.

16 MR. PLANT: Now, I am going to offer a substitute for
17 13 which is set forth in my supplement, in one second, if you
18 bear with me.

19 That is 22. I understand we have agreement on that from
20 General Counsel. How about you, Mr. Leff?

21 MR. LEFF: Yes, I will stipulate to your No. 22.

22 MR. PLANT: Now, for the stipulation that from at least
23 as early as March 12th, 1946, the millwrights employed in the
24 felt mill in the Emeryville plant, excepting the helper and t
25 oiler and covered by contract with Local 6 of the Internation

1 Longshoremens and Warehousemens Union, until August 1st, 1959,
2 received the same wage rate as that of the maintenance machinists
3 covered by Fibreboard's contract with the East Bay Union of
4 Machinists. ✓

5 MR. ROCHE: So stipulated.

6 MR. LEFF: So stipulated.

7 TRIAL EXAMINER: Noted and approved.

8 MR. PLANT: Now, returning to the original request, I
9 offer the stipulation that on or about July 15th, 1965 -- I will
10 reread this.

11 I will refer to the substitute which is 23 of the
12 supplement.

13 I overlooked the contract here.

14 MR. LEFF: Don't you want both of them?

15 MR. PLANT: Yes. I overlooked the contract in my original.

16 I propose the following stipulation that on or about July
17 15th, 1965, Fibreboard and the East Bay Union of Machinists
18 executed a bargaining contract covering Fibreboard's Martinez
19 plant -- Emeryville plant, of which a true and correct copy
20 is attached as Exhibit D-1 to Fibreboard's amended answer to
21 the specification and a bargaining contract covering Fibreboard's
22 Martinez plant of which a true and correct copy is attached
23 as Exhibit D-2 to Fibreboard's amended answer to the specifi-
24 cation.

25 MR. ROCHE: So stipulated.

1 MR. LEFF: So stipulated.

2 TRIAL EXAMINER: Noted and approved.

3 MR. PLANT: There is disagreement as to 15.

4 However, there is agreement, I believe so to a related
5 request contained in my supplemental motion and I propose
6 this stipulation.

7 MR. ROCHE: Which number is that?

8 MR. PLANT: 24. ✓

9 That on or about October 1st, 1960, Fibreboard closed
10 its Emeryville floor covering (felt base) plant. Is it so
11 stipulated?

12 MR. ROCHE: So stipulated.

13 MR. LEFF: So stipulated.

14 TRIAL EXAMINER: Noted and approved.

15 MR. PLANT: That on or about July 1st, 1961, Fibreboard
16 closed its Emeryville linoleum plant, is that so stipulated?

17 MR. ROCHE: So stipulated.

18 MR. LEFF: So stipulated.

19 TRIAL EXAMINER: Noted and approved.

2 20 MR. PLANT: That on or about March 1st, 1962, Fibreboard
21 moved its roofing plant to Martinez, is that so stipulated?

22 MR. ROCHE: So stipulated.

23 MR. LEFF: So stipulated.

24 TRIAL EXAMINER: Noted and approved.

25 MR. PLANT: Now, we might as well at that point include

1 the power house, hadn't we?

2 I believe that you have a -- just one second.

3 Next, that on or about February 1st, 1964, automatic
4 controls were installed from the power house boilers, thereby
5 eliminating the need for firemen. ✓

6 MR. ROCHE: Where are you now, Marion?

7 MR. PLANT: I am making this up in part out of a stipulation
8 you proposed, that is, in your 6, something that I neglected
9 to cover in my request.

10 MR. ROCHE: So stipulated.

11 MR. LEFF: So stipulated.

12 TRIAL EXAMINER: Noted and approved.

13 MR. PLANT: Now, turning to 16 of our original motion, I
14 offer the following stipulation:

15 That on August 1st, 1959, Fibreboard paid each of the
16 terminated employees a severance allowance in the amount set
17 forth in Schedule 5 of the appendix to said amended answer.

18 MR. ROCHE: So stipulated.

19 MR. LEFF: So stipulated.

20 TRIAL EXAMINER: Noted and approved.

21 MR. PLANT: That on August 1st, 1959, Fibreboard refunded
22 to each of the terminated employees who did not elect to take
23 early retirement or terminated vested status his retirement
24 deposits in the amount set forth opposite his name in said
25 Schedule 5.

1 MR. ROCHE: So stipulated.

2 MR. LEFF: So stipulated.

3 TRIAL EXAMINER: Noted and approved.

4 MR. PLANT: Next, that since August 1st, 1959, Fibreboard
5 has paid early retirement benefits to the terminated employees
6 who elected to take early retirement.

7 That Schedule 5 correctly sets forth the total amount of
8 the benefits so paid each of said employees up to September
9 15th, 1962, except the amount set forth opposite the names of
10 E. T. Johnson and F. L. Lowell, are the amounts paid to them
11 up to January 18th, 1959.

12 MR. ROCHE: 1965, you mean?

13 MR. PLANT: Yes, that should be '65.

14 MR. ROCHE: That last date should be January 18th, 1965.
15 So stipulated.

16 MR. LEFF: May we go off the record?

17 TRIAL EXAMINER: Off the record.

18 (Discussion off the record.)

19 TRIAL EXAMINER: On the record.

20 MR. LEFF: May I indicate for the record that I will
21 stipulate to the last stipulation that Mr. Plant put forward,
22 and I would offer at this point a stipulation that for those
23 individuals whose names I will now read who accepted early
24 retirement benefits under the Fibreboard retirement plan, the
25 monthly benefits they received are as follows:

1 Florin F. Bennett, \$77.85.

2 Dola F. Capps, \$49.15.

3 Manuel Crispino, \$108.11.

4 Josphe S. Cruze, \$132.56.

5 Nick C. Fuller, \$52.47.

6 D. A. Gronberg, \$71.15.

7 Robert Hamidy, \$80.66.

8 Robert E. Hughes, \$52.06.

9 Elmer T. Johnson, \$41.58.

10 J. P. Johnson, \$121.95.

11 Fredric L. Lowell, \$58.56.

12 Lloyd J. Nash, \$62.41.

13 Stanley J. Smith, \$105.87.

14 MR. PLANT: So stipulated.

15 MR. ROCHE: So stipulated.

16 TRIAL EXAMINER: Noted and approved.

17 MR. PLANT: I propose the stipulation that none of the
18 terminated employees has made any retirement plan deposits for
19 any part of the period from February 15th, 1962 -- make that
20 February 14th, 1962 to January 18th, 1965.

21 MR. ROCHE: Do you mean September, 1962?

22 MR. PLANT: Yes.

23 Let me rephrase that. That none of the terminated employees
24 has paid any retirement deposits for any part of the period
25 from September 14th, 1962, to January 18th, 1965.

1 MR. LEFF: So stipulated.

2 MR. ROCHE: So stipulated.

3 TRIAL EXAMINER: Off the record.

4 (Discussion off the record.)

5 TRIAL EXAMINER: On the record.

6 Very well. The stipulation is noted and approved subject
7 to the statement of Union counsel.

8 MR. PLANT: Now, 22, I think we have already covered or
9 have we?

10 MR. ROCHE: 22 of your supplement?

11 MR. PLANT: Yes.

12 MR. ROCHE: Yes, we have already stipulated to that.

13 MR. PLANT: 23 we have covered; 24 we have covered; now,
14 how about 25-A?

15 MR. LEFF: Yes.

16 MR. PLANT: Is there agreement?

17 MR. LEFF: Yes.

18 MR. PLANT: I offer the following stipulation:

19 That on July 31st, 1959, and since July 13th, 1959, Dave
20 Arca was a on-leave of absence to attend to Union business.

21 MR. LEFF: So stipulated.

22 MR. ROCHE: The General Counsel will so stipulate to that
23 with the assumptions that it means from July 13th, 1959, thro
24 July 31st, 1959, Mr. Dave Arca was on leave of absence to
25 attend Union business?

1 MR. PLANT: Yes.

2 TRIAL EXAMINER: Off the record.

3 (Discussion off the record.)

4 TRIAL EXAMINER: On the record.

5 MR. PLANT: I offer the following stipulation:

6 That on July 31st, 1959, and during almost all of the
7 time since Febraury 15, 1959, L. R. Jobe, J-o-b-e, was on
8 sickleave.

9 That on July 31st, 1959, and since July 2nd, 1959, A. F.
10 Holmes was on sickleave.

11 That on July 31st, 1959 and since July 8th, 1959, J.
12 Vanberbeck was working as a fireman in the power house.

13 That on July 31st, 1959 and for^a/time prior thereto, E. F.
14 Schlotterbeck was assigned to the roofing plant.

15 That on July 31st, 1959, and for some time prior thereto,
16 D. A. Gronberg's assignment was that of working foreman in the
17 felt mill.

18 MR. ROCHE: The General Counsel will stipulate to that
19 with the same provision as before that the word "since"
20 doesn't mean from that date to the present time, but it means
21 from the earlier date in each sentence to the later date in
22 each sentence.

23 TRIAL EXAMINER: Is that until the later date or inclusive
24 of the later date?

25 MR. PLANT: Inclusive.

1 MR. ROCHE: Inclusive.

2 So stipulated.

3 MR. LEFF: So stipulated.

4 TRIAL EXAMINER: Very well, noted and approved.

5 MR. PLANT: Is there agreement on 26?

6 MR. ROCHE: It is O.K.

7 MR. PLANT: I offer the following stipulation that on
8 August 1st, 1959, Fibreboard paid to each of the terminated
9 employees in addition to the severance allowance set forth in
10 Schedule 5 of the appendix to Fibreboard's amended answer, two
11 weeks pay in lieu of notice.

12 MR. ROCHE: So stipulated.

13 MR. LEFF: Well, your Honor, I will stipulate that those
14 specific sums of money were paid. Again, I don't want to
15 limit myself in the inferences to be drawn from the terminolo
16 used by the company.

17 That is, I don't necessarily see a distinction between
18 two weeks pay in lieu of notice in the severance allowance
19 and I wouldn't want my stipulation to assume that I am agree
20 to the company's characterization of it.

21 MR. PLANT: We set forth in our Schedule 5 severance
22 allowance for each employee, a certain amount.

23 This is a stipulation that in addition to paying that,
24 Fiberboard gave each man two weeks pay.

25 MR. LEFF: With that stipulation, I will agree. Further

1 than that, I would not agree.

2 TRIAL EXAMINER: The stipulation is noted and approved.

3 MR. PLANT: Next, I offer this stipulation that Exhibit
4 E attached to Fibreboard's amended answer is a true and
5 correct -- no, no.

6 Pardon me. I will withdraw that.

7 That Exhibit E attached to the Fibreboard's supplement to
8 its motion for a pre-trial conference is a true and correct
9 copy of the Fibreboard salary plan which was in effect during
10 the back pay period.

11 MR. ROCHE: So stipulated.

12 MR. LEFF: I, based upon the Employer's representation
13 that that was the plan, I will so stipulate, but I will be
14 checking with my clients and if I have any different view, I
15 will have it known.

16 TRIAL EXAMINER: I want to assure all counsel that any
17 stipulation arrived at during this pre-trial conference, that
18 at between now and the time we go to hearing or during the
19 course of the hearing there should be any change in your
20 thinking, it seems to me that counsel will have a right to make
21 such representations at that time, and if we can't stipulate,
22 then I propose if a finding is necessary, then I will have to
23 make it in my decision.

24 MR. PLANT: I will next offer the following stipulation
25 that the following men accepted reinstatement and are still
employed, except for J. Cruze who retired on October 1st, 1965:

1 F. C. Johnson, April 2nd, 1965. That is it.

2 MR. ROCHE: So stipulated..

3 MR. LEFF: So stipulated.

4 TRIAL EXAMINER: Noted and approved.

5 MR. PLANT: That ends my talking for a while.

6 If there is anything that was not covered in what I have,
7 offered and the two gentlemen wish to cover, why --

8 MR. LEFF: What about your propositions?

9 MR. PLANT: Oh, yes, I forgot the propositions.

10 Now, in my motion for a pre-trial conference, I set forth
11 certain propositions.

12 I will now state them one at a time to see if there is
13 agreement upon them.

14 First, is that no terminated employees entitled to back
15 pay for any period subsequent to his compulsory retirement
16 date as fixed by the retirement plan attached to Fibreboard's
17 amended answer as Exhibit B.

18 MR. ROCHE: The General Counsel will stipulate only to
19 that -- only up to the words "retirement date", omitting the
20 words "as fixed by the retirement plan", et cetera.

21 MR. PLANT: Will you please expound on that, Mr. Roche?

22 MR. ROCHE: Yes. This in its present form will cover,
23 include and encompass the seven men about whom there is some
24 doubt about his compulsory retirement date.

25 MR. PLANT: Is it your contention that their compulsory

1 retirement dates are not fixed by the plan, but by something
2 else?

3 MR. ROCHE: Yes.

4 MR. PLANT: By what else are they fixed?

5 MR. ROCHE: By a separate arrangement between the parties.

6 MR. PLANT: Relative to these particular men?

7 MR. ROCHE: Correct, relative to the men in the category
8 of these men.

9 MR. PLANT: Is that arrangement in writing or oral.

10 MR. ROCHE: Oral and in writing.

11 TRIAL EXAMINER: I would refer Respondent's counsel -- I
12 am sure he is aware of it -- to 6-B of the pre-trial statement of
13 General Counsel.

14 MR. PLANT: Well, yes, I just haven't had a chance to
15 read that yet. I have just gone through the proposed
16 stipulations. I haven't had a chance to read his pre-trial
17 statement yet.

18 TRIAL EXAMINER: I was just thinking from the standpoint
19 of continuity if we could have something on the record here
20 that perhaps might be helpful for me and I thought you were
21 alluding to that when you requested Government counsel to
22 expand on that.

23 MR. PLANT: Well, I think the situation is this, your
24 Honor.

25 We have already had a stipulation as to the compulsory

1 retirement dates of certain men and that there is dispute as
2 to the compulsory retirement dates of certain others.

3 I understood that the dispute was a dispute as to how the
4 plan should be construed.

5 Now, General Counsel tells me it is not a dispute as to
6 how the plan should be construed, but is a dispute, based upon
7 a claim by him that something other than the plan was controlling
8 is that right?

9 MR. ROCHE: This is correct.

10 TRIAL EXAMINER: Parol evidence?

11 MR. PLANT: Not merely parol evidence for the purpose of
12 construing the plan, but some other agreement.

13 TRIAL EXAMINER: I anticipate then that there will be
14 some action about whether or not a written document or this
15 proposed testimony of Government counsel comes within the
16 parole evidence rule?

17 MR. PLANT: I would think so.

18 MR. ROCHE: This will be one of the issues, however, I am
19 willing to stipulate as I stated as follows:

20 No terminated employee is entitled for back pay for any
21 period subsequent to his compulsory retirement date.

22 MR. PLANT: That is true.

23 MR. LEFF: I will stipulate to that.

24 TRIAL EXAMINER: Very well, noted and approved.

25 MR. PLANT: Now, the next proposition is this:

1 No terminated employee who is physically disabled from
2 working during any part of the period from September 15th,
3 1962, to January 8th, 1965, is entitled to backpay for the
4 period of such disability except for such amounts as would have
5 been payable to him under the Fiberboard salary plan.

6 MR. ROCHE: Instead of September 15th which you read, you
7 mean, September 14th, 1962?

8 MR. PLANT: Yes.

9 MR. ROCHE: And in place of January 8th, do you mean
10 January 18th?

11 MR. PLANT: That should be January 18th, yes. Will you
12 please make those corrections, Mr. Reporter?

13 THE REPORTER: Yes.

14 MR. ROCHE: With those corrections, the General Counsel
15 will so stipulate.

16 MR. LEFF: So stipulated.

17 TRIAL EXAMINER: Noted and approved.

18 MR. PLANT: I customarily write out stuff like this in
19 handwriting and I think I write it out faster than I write and
20 I am always leaving out words or putting down a wrong word.

21 The next proposition which I have offered is that no
22 terminated employee is entitled to back pay for any period
23 during which bargaining unit work would not have been available
24 to him due to reduction in the work force.

25 MR. ROCHE: So stipulated.

1 MR. LEFF: So stipulated.

2 TRIAL EXAMINER: Noted and approved.

3 MR. PLANT: And the next proposition which I offer is that
4 in computing the back pay of terminated employees, it is to
5 be deemed that they would have been called for available work
6 as machinists in the order of their seniority as machinists,
7 would have been called for available work as engineers, in
8 the order of their seniority as engineers and would have been
9 called for available work as firemen in their order -- in the
10 order of their seniority as firemen.

4 11 MR. ROCHE: Could we be off the record?

12 TRIAL EXAMINER: Yes.

13 Off the record.

14 (Discussion off the record.)

15 TRIAL EXAMINER: On the record.

16 MR. PLANT: At the end of that stipulation I would like
17 to add, and would have been called for available work as
18 helper in the order of their seniority as helpers.

19 MR. ROCHE: So stipulated.

20 MR. LEFF: So stipulated.

21 TRIAL EXAMINER: Noted and approved.

22 MR. PLANT: Now, the next one, the next proposition I
23 offer is the following: Well, that you will not agree to --
24 let's forget that.

25 Six, you will not agree to. I take it you will not agree

. . .

1 TRIAL EXAMINER: On the record.

2 MR. ROCHE: General Counsel proposes to stipulate that
3 the storekeeper's job was eliminated before September 1962.

4 MR. PLANT: So stipulated.

5 MR. LEFF: So stipulated.

6 TRIAL EXAMINER: Noted and approved.

7 Off the record.

8 (Discussion off the record.)

9 TRIAL EXAMINER: On the record.

10 MR. ROCHE: General Counsel proposes to stipulate that
11 the Respondent's central storehouse was demolished in
12 November or December of 1961.

13 MR. PLANT: So stipulated.

14 MR. LEFF: So stipulated.

15 TRIAL EXAMINER: Noted and approved.

16 MR. ROCHE: General Counsel proposes to stipulate that
17 in the event September 13, 1962, is held to be the correct
18 starting date for the back pay period herein, that interim
19 earnings for all employees shall be one-seventeenth of the
20 interim earnings listed for the 17-day period, September
21 14 through September 30, 1962, in the third quarter of 1962,
22 on all pages of Appendix B of the specification.

23 MR. PLANT: Do you mean one-seventeenth of the interim
24 earnings, or an additional seventeenth?

25 MR. ROCHE: I mean that the interim earnings for that

* * *

1 MR. LEFF: That Joseph Vanderbeck's regular work assign-
2 ment in June and July 1959 was as a machinist in the main
3 machine shop.

4 MR. PLANT: Would you care to rephrase that to read that
5 he was carried on the seniority list as a machinist. He
6 wasn't assigned to the machine shop. He was working over
7 in the fire house.

8 Do you see what I mean? He was carried on the machinist
9 seniority list, however, as a machinist.

10 MR. LEFF: Let me read the rest of it and see if the
11 rest is agreeable, and that his assignment to the fire house
12 as a fireman was on a temporary basis, that he requested
13 that he be returned to the machine shop, and that this request
14 to return has been granted to take effect as soon as a
15 replacement was obtained.

16 MR. PLANT: That is correct.

17 MR. LEFF: I will accept that.

18 MR. PLANT: If you want to elaborate on that, he had
19 been working over in the powerhouse since June 8th.

20 MR. LEFF: Well, let me rephrase that.

21 That Joseph Vanderbeck was carried on the Fibreboard
22 seniority list as a machinist, and from June 8, 1959 until
23 July 31, 1959, he was assigned to the powerhouse as a fire-
24 man.

25 This assignment was on a temporary basis, and that he

* * *

1 had requested that he be returned to the machine shop, and
2 that this request to return had been granted to take effect
3 as soon as a replacement was obtained.

4 MR. PLANT: So stipulated.

5 MR. ROCHE: So stipulated.

6 TRIAL EXAMINER: Noted and approved.

7 MR. LEFF: Reading from No. 10 on my proposed stipula-
8 tion, that in a letter from Fibreboard's attorney to the
9 compliance officer of the Board, dated March 24, 1965, the
10 compulsory retirement date for D. A. Gronberg, A. F. Holmes,
11 M. Crispino, R. Hamido, J. P. Johnson, F. F. Bennett, and
12 D. F. Capps, was given as 1-1-63.

13 MR. PLANT: Was that in the letter itself, or was it in
14 something that I enclosed with the letter?

15 MR. LEFF: It was in a schedule attached to the letter.

16 MR. PLANT: Do you want to rephrase it?

17 MR. LEFF: That in a schedule attached to a letter from
18 Fibreboard's attorney to the compliance officer, and then
19 the rest is the same.

20 MR. PLANT: So stipulated.

21 MR. ROCHE: So stipulated.

22 TRIAL EXAMINER: Noted and approved.

23 MR. LEFF: This is No. 13 of my request for stipulation,
24 that in the years 1960, 1961, 1962, 1963 and 1964, Fibreboard
25 neither sent to the union nor received from the union any

* * *

Now, would you expand on that, for my benefit?

MR. PLANT: Yes, Your Honor.

The Fibreboard contract contains a wage formula under which the machinists receive so much a day less, which I think you computed at 12 and a half cents an hour.

MR. ROCHE: That is right.

MR. PLANT: And some building trade employees.

Now, one reason why Fibreboard contracted out the work was because its maintenance costs were getting clear out of line. The highest wage rates paid under any other contract of the East Bay Union of Machinists for the back pay period are those of Foremost Food and Chemical Company, and are in this exhibit which was attached to our answer as Exhibit 2, and which have been marked 7 for identification.

There was in the Fibreboard plant a classification represented by the ILWU called the millwright, and historically he received the same wage rate as these machinists did. It has been true since 1946.

Whatever they got, he got. At the time the contract terminated, as we think it did, in July of 1959, he was getting \$3.52-1/2 an hour, and the machinists were getting \$3.52-1/2 per hour.

Now, the problem is to determine which rates, wage rates these machinists would have been getting during the back pay period.

* * *

1 been discussing.

2 MR. PLANT: Yes.

3 TRIAL EXAMINER: Four dollars versus \$4.50-1/2. Some of
4 the figure has been thrown out.

5 MR. PLANT: Well, that four-dollar figure was the figure
6 agreed to in August 1965. That wasn't during the back pay
7 period.

8 During the back pay period, the figures were lower.

9 TRIAL EXAMINER: Now, the Respondent in its answer states
10 also, with respect to the gross back pay formula, that
11 Schedule 2 of the appendix to the answer shows that there
12 was a reduction for maintenance men from July 31st to
13 September 15, 1962, the beginning of the back pay period.

14 MR. PLANT: Right.

15 TRIAL EXAMINER: What was that reduction, from what to
16 what?

17 MR. PLANT: Well, the reduction is in the number of
18 maintenance personnel needed.

19 TRIAL EXAMINER: Oh?

20 MR. PLANT: You see, we made stipulations earlier this
21 afternoon that a couple of the plants were closed, that one
22 moved to Martinez.

23 Now, the Schedule 2 in the amended answer is corrected,
24 and it shows how many men were employed in each of those
25 plants that was closed, and that number of men, incidentally,

1 agrees with the Appendix A to the specification which shows
2 the plant the men were employed in.

3 There were so many men in the plant and when the plant
4 closed, why, there were so many jobs eliminated.

5 TRIAL EXAMINER: If I recall, what — somewhere here is
6 there a different of two jobs, disagreement as to the number
7 of jobs that were available?

8 MR. ROCHE: I think I said a few jobs, Your Honor.

9 TRIAL EXAMINER: Somewhere it seemed to me that I saw
10 the figures 35 and 37.

11 MR. LEFF: The difference in the actual position as of the
12 beginning of the back pay period is the difference between
13 22 machinists and two helpers and 16 machinists and no
14 helpers.

15 TRIAL EXAMINER: That is 24 and 16?

16 MR. LEFF: That is right.

17 TRIAL EXAMINER: Now, the answer also states —

18 MR. PLANT: Are you looking at the amended answer, Your
19 Honor?

20 TRIAL EXAMINER: Yes. There is disagreement on the
21 number of jobs that were available at Emeryville and Martinez
22 am I correct? That was the figures you just gave.

23 MR. LEFF: That is correct, Your Honor. May I say those
24 figures mentioned are only for the machinists and helpers
25 categories. On the powerhouse we are not in disagreement at

1 all.

2 TRIAL EXAMINER: Now, Schedule 3 shows that each employee
3 would have earned from September 15, 1962, to January the 18th,
4 1965. That is Schedule 3 of the answer, and I understand
5 that the interim earnings of the employees as set out in
6 Appendix B of the specification has been admitted to be cor-
7 rect.

8 MR. ROCHE: No, that is not exactly right. On interim
9 earnings, I think we have made agreements in conferences.
10 There will be a few corrections, but I think other than that
11 they are acceptable to all parties.

12 TRIAL EXAMINER: Now, the answer makes specific reference
13 to Bradford, Fusare and Schlotterbeck's gross earnings. Have
14 there been any agreements on that?

15 Bradford's was \$2400 rather than \$2200 during the first
16 quarter of 1964.

17 MR. PLANT: Your Honor, you are looking at our original
18 answer and not the amended answer.

19 TRIAL EXAMINER: What does your amended answer state in
20 that regard?

21 MR. PLANT: Number one, it doesn't raise any question
22 with respect to Bradford. The original report of the enforce-
23 ment officer showed that figure of \$2400, and that was what we
24 based our allegation that he earned \$2400 during that quarter
25 on.

* * *

1 MR. ROCHE: Would it also be mentioned whose testimony
2 it is?

3 Is it separated as to the testimony of each individual?

4 MR. PLANT: Yes.

5 MR. ROCHE: I think that would be helpful.

6 MR. PLANT: Yes.

7 Now, if you should wish to borrow --

8 MR. LEFF: These are two separate things?

9 MR. PLANT: What?

10 MR. LEFF: You tore apart -- I think they are one list.

11 TRIAL EXAMINER: Off the record.

12 (Discussion off the record.)

13 TRIAL EXAMINER: On the record.

14 MR. PLANT: There was one other thing.

15 We made a stipulation yesterday which was part of the
16 longer stipulation that the powerhouse was automated on
17 February 1st, 1964.

18 The correct date is January 15th and that should be
19 substituted for February 1st in that stipulation.

20 Will you tend to that, Mr. Reporter?

21 THE REPORTER: Yes.

22 MR. LEFF: So stipulated.

23 MR. ROCHE: So stipulated.

24 TRIAL EXAMINER: Noted and approved.

25 MR. LEFF: I have some further stipulations that I am

1 prepared to propose now with the understanding that we have
2 discussed these.

3 Union's counsel will propose the following stipulation:

4 And I am reading from No. 1 of the proposed stipulations.

5 TRIAL EXAMINER: Is that your proposed stipulation?

6 MR. LEFF: My request for stipulations, yes, your Honor.

7 TRIAL EXAMINER: Very well.

8 MR. LEFF: That from 1946 to August 1st, 1959, the wage
9 rate for millwrights employed in the felt mill in the Emeryville
10 plant and covered by a contract between Fibreboard and Local
11 6 of the International Longshoremen and Warehousemen's Union
12 was determined by following the wage rate paid to Machinists
13 under the contract between the Union and Fibreboard and that
14 from August 1st, 1959, to June 1st, 1961, there was no increase
15 in the felt mill millwrights' rate and that from June 1st,
16 1961, through January 18th, 1965, the felt mill millwrights
17 received the increases negotiated by Local 6 and Local 17 of
18 the ILWU and Fibreboard through the distributors association.

19 MR. PLANT: So stipulated.

20 MR. ROCHE: So stipulated.

21 TRIAL EXAMINER: Noted and approved.

22 MR. LEFF: I am now reading from No. 11 of the request for
23 stipulation.

24 That in the period from August 1st, 1959, until January
25 18th, 1965, millwrights employed by the maintenance contractor

1 and doing work formerly done by members of the Union whose
2 employment was terminated on July 31st, 1959, were paid
3 Building Trades Millwrights rates.

4 MR. PLANT: May I suggest this one change?

5 "And doing work which included work formerly done."

6 MR. LEFF: I will accept that amendment.

7 MR. PLANT: So that it will read in the period from
8 August 1st, 1959 to January 18th, 1965, millwrights employed
9 by the maintenance contractor and doing work which included
10 work formerly done by members of the Union whose employment
11 was terminated on July 31st, 1959 were paid Building Trades
12 Millwright rates.

13 MR. ROCHE: So stipulated.

14 MR. PLANT: So stipulated.

15 TRIAL EXAMINER: Noted and approved.

16 MR. LEFF: That the Building Trades Millwright rates --
17 this is No. 12 -- that applied from August 1st, 1959, to
18 September 12th, 1962, were: June 16th, 1959, \$3.76; June
19 16th, 1960, \$3.94 and a half cent; June 16th, 1961, \$4.18.

20 MR. PLANT: So stipulated.

21 MR. ROCHE: So stipulated.

22 TRIAL EXAMINER: Noted and approved.

23 MR. LEFF: I am reading from No. 18: That Exhibits C-1
24 and C-2 attached hereto are true and correct copies of the
25 letter sent by the Union to Fibreboard more than 60 days prior

1 to the expiration date of the contract between the parties
2 which terminated on July 31st, 1958.

3 MR. PLANT: So stipulated.

4 MR. ROCHE: So stipulated.

5 TRIAL EXAMINER: Noted and approved.

6 I have been a bit intrigued by this matter of the
7 termination of the contract in the context of the 60-day
8 notice required under the Act.

9 Will that be before me and will I have to have that in
10 order to make any determinations of the issues which will be
11 before me?

12 MR. LEFF: Not necessarily, your Honor.

13 The position of the Board is that whether the contract
14 terminated or not, the best objective measure is the formula
15 that was in existence.

16 The Union's position is that the contract did not
17 terminate and therefore the formula was the only one that was
18 possible.

19 The Employer takes the position that the contract
20 terminated and with it the formula, and one must look to other
21 indications of the appropriate wage.

22 MR. PLANT: If I may answer your question, I take it that
23 if your Honor were to find that the contract continued in
24 effect through the back pay period, we would be stuck with
25 the wage formula set forth in the contract.

1 In order to find a lower wage rate, you would have to
2 find that the contract did terminate.

3 Does that answer your question?

4 TRIAL EXAMINER: Yes. It does and I can see from the
5 legal standpoint that there are many hazards that the parties
6 here undertake as an incident to this case, depending upon the
7 legal conclusions which are arrived at, which in turn will be
8 used in applying whatever those legal conclusions are to the
9 facts and figures in determining my dollar amounts.

10 MR. PLANT: No question about it.

11 TRIAL EXAMINER: Because this is an unusual case in the
12 sense that there are so many -- at least it appears to me --
13 moot, perhaps, matters of first impression and close question
14 from the legal standpoint which I think is rather unusual in
15 a back pay case.

16 MR. ROCHE: This case is sui generis, I think, we will all
17 stipulate to that.

18 TRIAL EXAMINER: Anything else?

19 MR. LEFF: I have a number of documents that I would like
20 to introduce for identification at this time.

21 I believe that there will be -- well, I leave the
22 reactions to the parties to their reactions as they come.

23 TRIAL EXAMINER: This is merely the identification stage.

24 MR. LEFF: Yes.

25 As Union's Exhibit No. 1, I will introduce the agreement

P R O C E E D I N G S

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TRIAL EXAMINER SAHM: On the record.

MR. PLANT: I propose a stipulation that the rates paid the ILWU millwright during the back pay period were as set forth in Paragraph 5 of the Amended Answer to the specification. ✓

MR. LEFF: So stipulated.

MR. ROCHE: So stipulated.

TRIAL EXAMINER: Noted and approved.

Off the record.

(Discussion off the record.)

TRIAL EXAMINER: On the record.

MR. PLANT: I propose a stipulation to the following effect: That the excerpts from the transcript of the contempt hearing in the Alameda County Superior Court, which excerpts have been marked for identification, contain all of the testimony bearing upon the conduct set forth in the findings of the Alameda County Superior Court except for the following: The testimony of Mr. Groulx was inadvertently omitted. If counsel deems it of significance, we will reproduce that.

With the further qualification that Mr. Arca, Mr. Beck, and Mr. Olson were each called to the stand but each refused to testify upon the ground that his testimony might tend to incriminate him. ✓

* * *

1 other words, lower wage costs.

2 Finally, the Board did not hold that the picketing
3 which thereafter occurred was induced or prolonged by this
4 refusal to bargain about letting out the work. There was
5 no finding of any kind upon that subject and it cannot be
6 assumed, I think, that the picketing is to be likened to a
7 strike induced by an employer's unfair labor practices.

8 TRIAL EXAMINER: What did the placards which the
9 pickets carried read, in substance? ✓

10 MR. PLANT: "Locked Out," as I recall it, because we
11 had let out the work to an independent contractor. That is
12 what brought on the picketing, not any refusal to bargain
13 about it. Their whole complaint was that we had locked the
14 out. Now, on the man in question, I think we have
15 agreement on the power house. I don't think there is any
16 dispute there. We have agreement in substance that when
17 the floor covering department, that is, the felt base and
18 printed floor covering and the linoleum department were
19 closed, that right then and there eliminated 11 machinist
20 jobs and one helper's job.

21 We also have agreement that there was another helper
22 job eliminated when the storeroom was eliminated.

23 So the issue on manpower jobs available during this
24 back pay period have been somewhat limited.

25 Now, I think that the evidence will show that no more

1 than five men were required to do the work which men in
2 this bargaining unit had done at Martinez, five machinists,
3 and that no more than 16 machinists -- pardon me -- 11
4 machinists were required to do the work which the men in this
5 bargaining unit had done in Emeryville. The evidence will
6 also show that there just weren't any helpers' jobs during
7 the back pay period. Indeed, there are not now. The next
8 question is that of the applicable wage rate. Now, the
9 Union's theory, to state the extreme one, was, or rather, it
10 is not just the Union's theory; it is General Counsel's
11 theory that even though the contract terminated, nevertheless
12 we have to assume that that contractual wage formula would
13 have remained in effect.

14 In other words, if the parties had bargained about
15 whether the work should be let to an independent contractor,
16 the bargaining would have resulted in an agreement continuing
17 the old wage rate in effect and under which Fibreboard would
18 not have let the work to an independent contractor.

19 Now, that is just utterly inconsistent with the facts,
20 with realities to assume that Fibreboard, although it
21 in fact let the work to an independent contractor, rather
22 than to continue with its old wage rates and costs would,
23 if it had bargained, taken the opposite course. The wage
24 formula, if applied here, would give wage rates throughout
25 the back pay period higher than the wage rate to which the

1 based on length of service."

2 And finally --

3 TRIAL EXAMINER: Are you passing on to something else
4 again?

5 MR. PLANT: Yes.

6 TRIAL EXAMINER: Well, do you agree that the employees,
7 insofar as the so-called hiatus or dead period is concerned,
8 that that period should be used or added to in the accumulation
9 of the necessary time in order for them to be eligible for
10 retirement?

11 MR. PLANT: Yes.

12 TRIAL EXAMINER: Well, then, that is out of the way.
13 Now, the only thing is that, as I see your disagreement
14 there, the Government and the Union are contending that --
15 and I am not too sure that I still understand it.

16 MR. PLANT: Neither am I.

17 TRIAL EXAMINER: Because it is abstract now in my
18 mind. If we could take some example of how that would
19 operate, what you are contending for --

20 MR. ROCHE: May I be heard, Your Honor?

21 TRIAL EXAMINER: Yes.

22 MR. ROCHE: As I understand the differences among
23 counsel, the Company is willing to grant all of the employees
24 time for the dead period but pension benefits under the
25 Fibreboard Retirement Plan are not based on time. They are

1 based on contributions to the plan. To give time, therefore,
2 is to give nothing. ✓

3 The General Counsel contends that they should be given
4 credit for the dead period as well as for the back pay
5 period, and that in order to determine what contributions
6 the employee would have to make for the dead period we will ✓
7 have to use the same formula we have used in the Specification
8 to determine what the pay would have been during the back pay
9 period.

10 The General Counsel doesn't ask that the Trial Examiner
11 or the Board award retirement benefits based on the back pay ✓
12 period unless the employee pays the contributions he would
13 have paid had he worked during that period.

14 TRIAL EXAMINER: In other words, that would be a deduc-
15 tion.

16 MR. ROCHE: That would be a deduction from back pay
17 due.

18 Now, the Union's viewpoint, as I understand it, is that
19 the employee should receive retirement credit for the back
20 pay period as well as for his individual back pay period and
21 that deductions should be allowed from back pay only for
22 the back pay period and that no deductions should be allowed
23 for the dead period.

24 This is where General Counsel parts company --

25 TRIAL EXAMINER: With the Union. And you have no cases

1 on that, though?

2 MR. ROCHE: There are no cases on it. I can confidently
3 state that, Your Honor.

4 TRIAL EXAMINER: Well, that is what I didn't know. You
5 recall I asked you whether it operated, for instance, like
6 the Federal Government pension plan. There are only two
7 considerations, namely, if you put in your required time,
8 20 years, 25, 30 years, to be eligible for retirement. Now,
9 as I understand counsel, he agrees that time of this dead
10 period shall be computed in arriving at the date under which
11 the employee would have been eligible for retirement so that
12 he wouldn't lose out at all there, in other words, if he
13 went to work in 1940 and were eligible for retirement in
14 1960, 20 years, he wouldn't lose out there. That dead period
15 would be computed.

16 Now, again under the Federal Plan the pension is
17 determined on the average of your five highest years, so
18 that length has nothing to do with it as such, that you
19 will get it, and it is reasonable to suppose -- as a matter
20 of fact, I imagine official notice could be taken of the
21 fact by and large that most people are earning their most
22 at the time they are retired; they are going up; they should
23 be.

24 So that I fail to see now in your plan how will it
25 result in the employee getting less of a pension if that

1 In the absence of any substantive objections with
2 respect to their relevancy as a matter of law, they are not
3 admissible, something of that sort, of course, I will rule on
4 it at that time.

5 Insofar as these records are concerned, I see no
6 objection to their coming into evidence and being made a
7 part of this record because repeated reference has been made
8 to many of the pleadings that comprise the formal file.

9 MR. PLANT: Is it understood, Your Honor, that, for
10 example, the back pay specification ---

11 TRIAL EXAMINER: That is not a matter of proof because
12 everything you have -- which has been alleged in the
13 specification -- has been either admitted, specifically denied,
14 or admitted with qualifications.

15 MR. PLANT: That is my point.

16 TRIAL EXAMINER: Yes.

17 MR. PLANT: I have no objection to them being made a
18 part of the record, but I do object to their being given any
19 probative value as to the facts alleged therein.

20 MR. ROCHE: Well, it is a pleading, Mr. Plant, and it
21 is offered as such.

22 And probably the entire balance of General Counsel's
23 Exhibit 1-A consists of the Board decisions, court decisions,
24 court decree, et cetera.

25 The General Counsel would at this time offer into

1 evidence an amended Appendix B and Appendix C of the
2 Specification.

3 This is in duplicate.

4 Copies have been furnished to all counsel herein.

5 The appendix in this case is substituted for Appendix
6 B and is marked Appendix B-1, and in substitution for
7 Appendix C of the Specification, this exhibit includes an
8 Appendix C-1, consisting of two pages, and Appendix C-2,
9 consisting of one page, and Appendix C-3, consisting of
10 two pages also.

11 Appendix B-1, like its forerunner, Appendix B, lists
12 the back pay, interim earnings, expenses, et cetera, for
13 each individual except that Appendix B-1 modifies Appendix
14 B by deleting certain individuals who were named in the
15 proceeding this morning, and Appendix B-1 further modifies
16 Appendix B by shortening in many instances the back pay
17 period for which the individual is entitled.

18 Appendix C-1 modifies Appendix C of the original
19 Specification by adding to the back pay due as such the
20 pension deficit and by subtracting deductions against back
21 pay which are explained further in Appendix C-2 and C-3.

22 The mode of computation on gross back pay, all parties
23 understand.

24 The mode of computation on retirement benefits is on
25 the basis set forth in Fibreboard's Retirement Plan booklet

1 which is already in evidence in this proceeding and is part
2 of the pleadings, I think, or is an exhibit or perhaps both.

3 I don't think there are any further comments, but I
4 would then offer Appendix B-1 and Appendix C-1, C-2, and C-3.

5 TRIAL EXAMINER: Do I understand, for my purposes, that
6 I can disregard the original amended appendices and confine
7 myself entirely to this?

8 MR. ROCHE: That is correct, Mr. Trial Examiner.

9 You may ignore Appendix B of the original Specification
10 and Appendix C of the original Specification, and in place
11 of those consider these as the proper and current appendices
12 to the Specification.

13 TRIAL EXAMINER: Has counsel had an opportunity to
14 examine them?

15 MR. PLANT: Yes.

16 TRIAL EXAMINER: Now, with respect to General Counsel's
17 Exhibits identified as General Counsel's Exhibits 1-A through
18 1-L, the so-called formal documents, is there any objection
19 to their receipt into evidence?

20 MR. PLANT: None other than that which I have stated
21 already.

22 MR. LEFF: No objection.

23 TRIAL EXAMINER: General Counsel's Exhibits 1-A through
24 1-L, heretofore marked for identification, will be received
25 into evidence.

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(The documents above referred heretofore marked General Counsel's Exhibits 1-A through 1-P were received in evidence.)

MR. ROCHE: May we go off the record?

TRIAL EXAMINER: Yes. Off the record.

(Discussion off the record.)

TRIAL EXAMINER: On the record.

MR. ROCHE: General Counsel is offering Appendix B-1 as General Counsel's Exhibit 1-M; General Counsel is offering Appendix C-1 as General Counsel's Exhibit 1-N; General Counsel is offering General Counsel's Exhibit C-2 as General Counsel's Exhibit 1-O; and General Counsel is offering Appendix C-3 as General Counsel's Exhibit 1-P.

TRIAL EXAMINER: Any objection to the receipt into evidence of General Counsel's Exhibits 1-M, 1-N, 1-O, and 1-P?

MR. PLANT: The only objection that I have already stated is that it is understood that they are not admitted as proof of the facts stated therein, but as part of the original documents in the case, they being, in fact, amended schedules, appendices to the Specification?

TRIAL EXAMINER: Very well.

MR. LEFF: No objection.

TRIAL EXAMINER: There being no objection, General Counsel's Exhibits 1-M, 1-N, 1-O, and 1-P will be received

1 into evidence.

2 (The documents above referred to
3 were marked General Counsel's
4 Exhibits 1-M, 1-N, 1-O, and
1-P for identification and re-
ceived in evidence.)

5 MR. ROCHE: Your Honor, I wonder if this would be an
6 appropriate time to determine how many of the proposed
7 exhibits from all parties that can be admitted into evidence
8 on stipulation?

9 MR. PLANT: I think the only way to do is to offer them
10 one at a time, and if I have an objection, I will state it.
11 I can't consider these things en masse.

12 MR. ROCHE: Well, the thought occurred to me that
13 I can only think of one of your exhibits that I might pose
14 an objection to, and I thought if other counsel felt that
15 way about most exhibits, a considerable time might be saved
16 in stipulating them in at this point.

17 MR. PLANT: I don't feel that way about the number of
18 the Union's exhibits.

19 MR. ROCHE: Well, the General Counsel would --

20 MR. PLANT: As a matter of fact, I am not even sure from
21 the fact that they have been marked for identification, that
22 they will be actually offered in evidence.

23 MR. ROCHE: General Counsel intends to offer Board's
24 Exhibit 2, which was marked for identification this morning.

25 Board Exhibit 2 for identification being a compilation

1 MR. ROCHE: I think that they are properly part of the
2 formal papers, even though they were introduced prior to the
3 hearing.

4 TRIAL EXAMINER: The Amended Answer will take the
5 designation 1-Q, and the Appendix to the Amended Answer will
6 take the designation 1-R, and I understand in the absence of
7 hearing otherwise, the parties have no objection to their
8 receipt into evidence as part of the so-called formal file?

9 MR. LEFF: No objection.

10 MR. PLANT: No objection.

11 TRIAL EXAMINER: General Counsel's Exhibit 1-Q, the
12 Amended Answer, and General Counsel's Exhibit 1-R, the
13 Appendix to the Amended Answer, will be received into evidence
14 as so marked.

15 (The documents above referred
16 were marked General Counsel's
17 Exhibits 1-Q and 1-R for
identification and received in
evidence.)

18 MR. ROCHE: I would like to state at this time in off-
19 the-record discussions with counsel for Respondent, we have
20 agreed to let a witness who has been waiting here several
21 days to testify, to be called today.

22 He is a witness who has been subpoenaed by Respondent.
23 and he is the only witness, to my knowledge, that Respondent
24 intends to call with respect to, I guess, his availability
25 for working during the back pay period, is that correct, Mr.

1 Plant?

2 MR. PLANT: Yes.

3 MR. ROCHE: General Counsel has no objection to this.

4 TRIAL EXAMINER: Very well. Call the witness, please.

5 MR. PLANT: I call Mr. Johnson, please.

6 TRIAL EXAMINER: Step forward, sir.

7 Whereupon,

8 FRED C. JOHNSON

9 was called as a witness by and on behalf of the Respondent,
10 and, having been first duly sworn, was examined and testified
11 as follows:

12 TRIAL EXAMINER: Be seated, please.

13 DIRECT EXAMINATION

14 Q (By Mr. Plant) State your full name, Mr. Johnson?

15 A Fred C. Johnson.

16 Q Where do you live?

17 A In South Lake Tahoe, California. It is now -- yes,
18 Lake Tahoe.

19 Q That is in the Tahoe Valley area?

20 A Well, formerly it was Tahoe Valley, but the city was
21 incorporated and it is now -- the whole area is considered
22 as South Lake Tahoe, as one city.

23 Q How long have you lived there?

24 A Since about May 1, 1960.

25 Q And where did you live before then?

1 A 292 Mather Street, Oakland.

2 Q Did you own a home in Oakland? ✓

3 A I did.

4 Q When you moved to Tahoe, what did you do with your
5 Oakland home? ✓

6 A I sold my home.

7 Q What did you do about a place to live up at Tahoe?

8 A I rented a place up at Lake Tahoe for two months while
9 we built a house up there. ✓

10 Q Did you do some of the construction work yourself?

11 A I sure did.

12 Q Did you buy the lots at that time?

13 A No, I have had the lot for about three years previous,

14 Q How many lots did you have? ✓

15 A Just one.

16 Q You bought it three years previous?

17 A Previous to this time, yes.

18 Q What did you purchase it for, some investment, or what

19 A That was one place I always intended to retire to at

20 one time when I was through, because I liked it up there and

21 I had one particular kind of a lot that I had in mind,

22 and those are kind of scarce. So when a particular lot like

23 that came up, I thought I better buy it. ✓

24 Q Now, during the years '62, '63, '64, and the early part
25 of '65, did you have any income other than your earnings?

1 A Yes. ✓

2 Q What was the nature of that income?

3 A Well, most of my income came about by working at the
4 La Baer Hotel, or at Security Sales. ✓

5 Q My question was whether you had income other than your
6 earnings?

7 A Yes.

8 Q What was the nature of that income? ✓

9 A Investment income.

10 MR. ROCHE: Objection. The General Counsel doesn't
11 see the materiality of income which would not be considered
12 interim earnings in any event.

13 MR. PLANT: If you would like me to state the purpose
14 of my question, I would like to do so outside of the hearing
15 of the witness.

16 TRIAL EXAMINER: Very well. Mr. Witness, do you see that
17 back door there?

18 THE WITNESS: Yes.

19 TRIAL EXAMINER: Will you step outside just a moment,
20 just outside that glass part there, and we will call you in
21 a few minutes? ✓

22 THE WITNESS: Yes.

23 (The Witness left the room.)

24 MR. PLANT: What I propose to develop in my questioning
25 is this, Your Honor: That Mr. Johnson had something in

1 excess of \$4,000 a year income from dividends, interest, and
2 investments, and that he liked it up at Lake Tahoe, and that
3 he decided to move up there and live in a large part on his
4 other income, that he did not diligently seek work. He had
5 the means to live without seeking work.

6 MR. ROCHE: Mr. Trial Examiner, the General Counsel and
7 I believe that the Union counsel would be willing to stipulate
8 that Mr. Johnson had sufficient dividend income in excess of
9 \$4,000 while he lived at Lake Tahoe, and also he had the
10 same dividend income or approximately while he was an employ
11 at Fibreboard.

12 MR. PLANT: You mean annual income?

13 MR. ROCHE: Yes.

14 He didn't buy all of his stocks when he got fired from
15 Fibreboard.

16 MR. PLANT: I would like to question him on the subject
17 to develop the whole picture.

18 TRIAL EXAMINER: Well, as a matter of fact, I am
19 reluctant to, but I sometimes do agree that a form of an
20 offer can be given in question and answer form.

21 I see no objection. I see no prejudice because of
22 course, I have got to make my findings on substantial facts:

23 The Act so says and the courts have so interpreted.
24 I see no objection to this coming in, and I'll say right at
25 the outset that with a case the history that this has, I

1 don't know whether I am going to decide it correctly, but I
2 am going to decide it as fast as I can, and I want to, although
3 it is not a legal reason, and certainly the textbooks wouldn't
4 approve of what I am going to say, but I would rather have
5 some testimony come in that you may be right about, that it
6 may be surplusage, or it may not be relevant.

7 However, if I consider it surplusage, I wouldn't
8 consider it in my decision. If I find it irrelevant, I
9 wouldn't consider it, and if I find it relevant, I will
10 consider it.

11 So at most if this goes to any higher authority, which
12 it is reasonable to anticipate it will, at least they will
13 have the record before them as to whether I was right or not.

14 What I want to do by all of this is to preclude a
15 remand. That is what I mean by getting this case decided
16 as fast as possible.

17 So that as I said, certainly it isn't an indefensible
18 basis for deciding the admission of testimony. But this case,
19 as you mentioned at the outset, Mr. Roche, is *sui generis*
20 and in many aspects it is.

21 And I might very well in some of my rulings fall back
22 on that.

23 MR. ROCHE: The General Counsel has no objection to
24 this type of evidence as such, other than its materiality
25 or other than to an inference that because a man has a small

1 private income he is less inclined to look for work.

2 TRIAL EXAMINER: That might very well be true, but I
3 want to point out to counsel that at the beginning of a
4 trial, at the beginning of a hearing, that the issues don't
5 crystallize as fast as they do and as rapidly as they do
6 toward the end of the hearing. That has been my experience.
7 At this point, since I am -- I think I know what the issues
8 are. I think that this pretrial has been very helpful.
9 However, I very often find that opening statements are
10 built on expectancies that don't materialize when truth
11 is adduced. Witnesses disappoint counsel and things of
12 that sort, so that perhaps the issues haven't crystallized
13 as much as they will, I hope, at the hearing.

14 I am going to permit this testimony to come in.

15 MR. LEFF: May I state for the record my position?

16 TRIAL EXAMINER: Yes.

17 MR. LEFF: I don't think it has anything to do in
18 Mr. Johnson's case here and since there is only one case
19 of this type. However, if there were more than one, I
20 would be willing to argue about it as far as the time is
21 concerned, but since there is only one man involved, I
22 think I will agree to let it come in for what it is worth.

23 TRIAL EXAMINER: Very well. Call the witness in.
24 The objection is overruled.

25 Take the stand again, please, Mr. Johnson.

1 (The witness resumed the witness stand.)

2 MR. PLANT: Mr. Reporter, can you find that question?

3 (Record read.)

4 TRIAL EXAMINER: Will you answer the question?

5 THE WITNESS: I said through investments, stocks and
6 bonds first, and second mortgages. ✓

7 Q (By Mr. Plant) What did it run per year?

8 A Well, it varies. I would say between \$300 and \$350
9 a month.

10 Q I am not very good at mathematics. What would that
11 be a year?

12 A Well, around \$3000 -- no, let's see. Ordinarily it
13 would run around between \$3600 and \$4000. Of course, it
14 increases every year. It has been up till now, anyway.
15 What it was in 1961, I would have to guess.

16 Q Let's take the year 1961. ✓

17 I will show you what purports to be a copy of the
18 first page of your income tax return from that year.

19 You have a copy of that?

20 MR. ROCHE: Yes.

21 Q (By Mr. Plant) I will ask you to take a look at that
22 and see if that refreshes your memory?

23 A That's correct, I guess.

24 Now, that is a little more than I thought it was.

25 Q So is it true that in the year 1961 you received from

1 dividends, interest, rents, royalties, pensions, et cetera
2 \$4,443.83?

3 A Yes. I will verify to that effect if that is what
4 I reported.

5 Q Now, let's take 1962.

6 Would you like to take a look at the first page of
7 your income tax return for that year?

8 A Yes, that's right.

9 Q Is it true that in 1962 you received from dividends
10 \$2,695.40?

11 A Yes.

12 Q Did you receive from interest \$1,610.86?

13 A That's right.

14 Q And that if I am not mistaken, comes to a total of
15 \$4,306.20?

16 A That's right.

17 Q Now, is this about what your income from dividends,
18 interest, and so forth came to each year during the years
19 '63, '64?

20 A Some of the dividends have been increased since then
21 I haven't sold any stocks, but I made some switches.
22 However, the amount of investment is practically the same.

23 Q Do you enjoy living up at Tahoe?

24 A Well, yes. If I didn't enjoy living up there, I
25 wouldn't be there.

1 Q Do you have a boat on the lake?

2 A I do.

3 Q When did you get that?

4 A 1962, I believe.

5 Q Now, when you were offered reinstatement by
6 Fibreboard, did you accept it?

7 A I did.

8 Q About when was it that you returned to work?

9 A It was the first part of March.

10 Q Did you quit your job?

11 A I did.

12 Q When?

13 A I worked there two weeks.

14 Q And quit and went back up to Tahoe?

15 A Yes.

16 Q Why did you accept reinstatement?

17 A Well, that's between -- the Union, the way I under-
18 stood it, wanted as many of the men to come back to work to
19 get -- I figured the changeover was going to take place all
20 in one day, in other words, this is what I mean. Our gang
21 would come in and the other gang would go out.

22 Well, in a changeover like that, I figured I was doing
23 the company a favor if I came in and helped during the
24 changeover period.

25 In fact, when we were offered a reinstatement, I think

1 it was in the first part of June -- I mean January -- and
2 if I were called back in the first month or six weeks, I
3 would probably be there for two or three months.

4 As it was, I had another engagement where I had to
5 to on the 1st of April.

6 Q Isn't it true that you accepted reinstatement because
7 you were under the impression that you had to do it in order
8 to get back pay?

9 A I was informed that it might have some effect on it,
10 yes.

11 Q After a couple of weeks you quit?

12 A Yes.

13 Q Why?

14 A As I say, I had another engagement I had to take care
15 of around the 1st of April.

16 Q Where?

17 A Up at the lake.

18 Q What was that?

19 A Work there.

20 Q What kind of work?

21 A Up at the motel. We were working there off and on.

22 Q Do you prefer living at Tahoe to living in the Bay
23 Area?

24 A Well, if I had my choice between the two, yes, I
25 would live in Lake Tahoe.

1 Q That is what you did?

2 A Yes.

3 Q Are there any industrial plants of any sort in the
4 Tahoe area?

5 A No, industrial -- no industrial plants whatsoever.
6 The only thing there is are the clubs. ✓

7 Q By the way, when you were terminated at Fibreboard,
8 did you ever seek employment with the independent contractor
9 that took over? ✓

10 A No, because they were all AFL as far as the Machinists
11 were concerned, and we were CIO.

12 Q I thought AFL and CIO were one and the same nowadays.
13 Weren't they then?

14 A No.

15 Q Do you think you would be denied a job because you
16 were CIO, as you call it?

17 A I tell you the plain fact, Mr. Plant, that it never
18 occurred to me to seek a job at the plant through -- on this
19 new set-up. I don't think any of the men, as far as I
20 know, in our union applied for a job on a new set-up.

21 Q Now, up at Tahoe I believe you said that you work
22 for a motel on occasion?

23 A Yes.

24 Q Doing what?

25 A Well, ordinarily the wife and I both worked there.

1 When we worked up there we started out -- let me explain
2 something.

3 A motel is a seven-day-a-week operation, 24 hours a
4 day.

5 And we would relieve these people when they would go
6 on a vacation or they would take a day or two off, and
7 every time they did, we took over.

8 Q You also worked for Tallac?

9 A Tallac Properties are the owner of the La Baer Hotel.

10 Q Did you work for some boat works of some sort? ✓

11 A Yes, Specialty Sales. That was the gentleman I bought
12 my boat from and he at that time ran a storage place and
13 small boat repair works, and so in between when we didn't
14 work up at the motel, I would give him a hand and fix boats
15 and motors.

16 As I say, the pay, I think I got \$2.00 an hour there.
17 That is why the moneys didn't run up too fast, but it was
18 work.

19 Q Did you come down to the Bay Area at all between the
20 time you first went to Tahoe and the time you came back
21 to work at Fibreboard in March?

22 A I was down in the Bay Area quite frequently, yes.

23 Q Doing what? On visits?

24 A On visits and every time I came down here I always
25 went down to see Mr. Ferber down at the union. ✓

MR. PLANT: No further questions.

CROSS-EXAMINATION

Q (By Mr. Roche) Mr. Johnson, after you were terminated at Fibreboard on July 31, 1959, did you seek employment immediately thereafter?

A I sure did.

Q Did you obtain any employment after that?

A The only place I obtained employment after that was when I went to work for a trailer outfit, and I forget the name of it. My names happen to slip my mind now. Anyway, I went to work there because a friend of mine was superintendent out there and they had some jig work they wanted done, and I went out there and worked as a machinist to complete this job which only lasted about 3-1/2 months or so. It was a temporary job when I went out there, and that is how I knew it.

The only way I got this was because I happened to know Mike Berata who was the superintendent out there and he was a personal friend of mine.

Q When did you start working out at that trailer outfit?

A If I remember correctly, it must have been around November.

Q 1959?

A Yes.

Q Until when?

1 A I think the job was completed sometime the first part
2 of February.

3 Q Of 1960?

4 A Yes.

5 Q 1960?

6 A Yes.

7 Q Now, between the time you left Fibreboard and the
8 time you went to work for the trailer company, what sort of
9 efforts did you make to look for work?

10 A You mean before --

11 Q Before you went to work for the trailer outfit?

12 A Well, I would say that I was registered down at the
13 union.

14 Q Were you also registered at the State Unemployment
15 Office?

16 A Yes, because part of the time there we were drawing
17 our unemployment insurance so we reported to the Unemployment
18 Office once a week and also the union once or twice a week.

19 Q You were required to report to the Unemployment Office
20 once a week?

21 A Yes.

22 Q And you were required, or you reported to the Union
23 Hall once or twice a week?

24 A Yes.

25 Q Did you report?

1 A Yes.

2 Q In addition to reporting to the State Unemployment
3 Office and to the Union Hall during that period before
4 November, 1959, did you make any independent efforts to
5 obtain work?

6 A Well, I went to every place in the Bay Area that
7 I figured I could get a job that I could handle.

8 Q And what sort of firms were they?

9 A I mostly went to the can companies and people that
10 had a lot of machinery that needed repairing. In fact, I
11 would look at the telephone book in the morning and I would
12 make a check in the industrial plants, and that day I would
13 go see two or three of them, and the next day I would go
14 do the same thing.

15 Q Did you make personal contacts with these companies?

16 A Yes, I went to an employment agency and put in my
17 application and talked to the employment manager, or whoever
18 was there.

19 Q In addition to the personal contacts, did you make
20 any telephone calls?

21 A Yes, well, I watched the ads.

22 Q Did you answer ads?

23 A I answered one in particular. The name of the company
24 wasn't there, but it was a punch press outfit, I remember
25 that, and the way the ad stated, and I thought, "Boy, there

1 is one that is just up in my line."

2 So I called this gentleman up and I think I must
3 have talked to him at least 10 or 15 minutes and he was
4 all ready to tell me to come to work in the morning, and
5 then he said, "By the way, how old are you?" I had to
6 tell him my age, which was 58 at that time, and he couldn't
7 hang up the receiver fast enough.

8 Q What was your age at that time, again?

9 A I was born in 1902, and this was in 1960, so that
10 would make me 58.

11 Q Now, in your seeking for employment, were you ever
12 given any tests of your ability as a mechanic or machinist?

13 A No.

14 Q Were you ever given any written tests?

15 A No, the only written test I ever took, I went over
16 applied at the American Machinery and Foundry for an
17 automatic pinsetter's job, and I took a written examination
18 and an oral examination over there.

19 Q Do you know the results of the examination?

20 A The girl in the office said I passed it with flying
21 colors.

22 Q Did you hear anything from that?

23 A I never heard anything from it.

24 Q During the time that you -- I take it, Mr. Johnson,
25 that you looked for work after you left the trailer company.

1 is that correct?

2 A Certainly. I went through about the same procedure
3 as I did before.

4 Q After you left the trailer company, were you reporting
5 to the Unemployment Office once a week?

6 A Absolutely, because I was still drawing unemployment
7 because that extended my unemployment insurance when I went
8 to work.

9 Q Did you draw unemployment in the Bay Area from the
10 time you left the trailer company in February of 1960 until
11 the time you went up to Tahoe in March of 1965? ✓

12 A I did. I drew unemployment all the time that I --
13 from the time that I left.

14 Q You went up to Tahoe, I mean in May of 1960? ✓

15 A Right, the first week in May, 1960.

16 Q 1960?

17 A Yes.

18 TRIAL EXAMINER: 1960, Mr. Roche?

19 MR. ROCHE: Yes.

20 Q (By Mr. Roche) Now, during the period February, 1960
21 until you went up to Tahoe in May of 1960, were you also
22 contacting the Union Hall in your search for employment? ✓

23 A Will you repeat that question, please?

24 Q From the time you left the trailer company until --
25 February 1960 until the time you went to Tahoe in May of

1 1960, were you contacting the Union Hall about employment?

2 A Oh, absolutely, because in order to draw your
3 unemployment the Union has to stamp your card before you go
4 to the Unemployment Office. The Unemployment Office won't
5 pay your Unemployment Insurance unless you had a stamp from
6 the Union that you were seeking work.

7 Q Well --

8 A In other words, the Union had to clear you before you
9 could draw Unemployment Insurance.

10 Q Did this mean you had to report to the Union Hall at
11 least once a week?

12 A Oh, at least.

13 Q Did you report to the Union Hall more than once a
14 week?

15 A It would vary. Sometimes it would be twice and
16 sometimes it would be three times, and sometimes only once.
17 Or I would give them a ring on the telephone. In other
18 words, I was in constant touch with them.

19 Q In your search for work, did you contact any of the
20 companies with which Local 1304 has contracts?

21 A I contacted a few of them, especially the can company.

22 Q Would that be American Can Company? X

23 A American Can Company and Continental Can Company,
24 because two or three of our boys were to work -- I think
25 two of them went to work for American Can, and I don't know

1 about Continental. However, I know two or three went to
2 work for American Can.

3 Q Did you apply for employment at Mother's Cakes and
4 Cookies?

5 A Yes.

6 Q Did you hear anything from that application?

7 A No.

8 Q Mr. Johnson, are you a fully qualified journeyman
9 machinist?

10 A No.

11 Q Explain that, please.

12 I mean, you were classified as a machinist at
13 Fibreboard?

14 A I was classified as a machinist at Fibreboard because
15 we were called specialists when we went to work there, and
16 then during the war, to raise our rate. In other words,
17 we were raised and given a machinist's rating. I am not
18 a machinist's man.

19 I don't know how to operate half of the machines.

20 As far as Fibreboard was concerned, in working on machines
21 and repairing them, I guess I could do as good as any other
22 machinist on the job, but I couldn't set up a job on the
23 lathe. However, that was a big handicap. It left the
24 field which was open to me rather small because I couldn't
25 set up a job on a lathe.

x x x

Q Now, you stated on direct testimony that while you were working at Fibreboard you lived in a house that you owned in Oakland, is that correct?

A Yes, sir.

Q Do you still own that house?

A No, I sold it.

Q When did you sell it?

A I sold it just before I moved up to the lake.

Q What was your purpose in moving up to the lake?

A Well, we went -- I had this lot up at the lake and I had a young friend of mine that had just gotten into the contracting business, Mr. Norgard, N-o-r-g-a-r-d, and he was -- wanted to start out in the contracting business and build homes, and so I thought, well, let's go up to the lake and we will build one on my property, and maybe we can sell more like it.

Q Did you and Mr. Norgard build a house on your lot?

A Yes.

Q Did you build this as sort of a demonstration house?

A Well, that was the idea, and then if we couldn't sell it or get any more work, then I had a place to live in.

Q You mentioned that you owned the lot for approximately three years, is that correct?

A That's right.

Q And did you also put up the construction cost of

1 building this house?

2 A Yes, I put up all the money.

3 Q And Mr. Norgard put up his labor?

4 A Yes, and I paid him daily wages.

5 Q Did you consider this to be a business venture aimed
6 at making profit? ✓

7 A Well, it had that possibility.

8 Q And after you built the house, what efforts did you
9 make to get other business?

10 A We tried to contact people around there that had lots
11 and maybe wanted houses, and with the idea that we would be
12 able, maybe, to build a house for them at a certain profit.

13 Q Did you place any ads to this effect?

14 A I don't remember distinctly if we placed any ads.

15 I know we had our contractor's sign out in front of the
16 house and local advertising and talking. ✓

17 Q Were you able to get any contracting business out of
18 that venture?

19 A No. We had about three prospects but they all fell
20 through.

21 Q Now, before you moved up to the Tahoe area, Mr.
22 Johnson, do you feel you had exhausted the job possibilities
23 in the Bay Area?

24 A Well, let me answer this question in this way, if I
25 may: Now, I had no idea, as far as I am concerned, that
✓

1 anything like this was going to come up.

2 Q I would like you to restrict yourself to the question
3 The question was whether, at the time you moved up to the
4 lake, Lake Tahoe, whether you felt you had exhausted the
5 possibilities of finding work in the Bay Area?

6 A I did.

7 Q Now, you stated on direct examination that you had
8 certain income from dividends and interest during the years
9 1961 and 1962. Could you tell the Trial Examiner whether
10 you had income from interest and dividends during the
11 years '58 and '59 while you were working at Fibreboard?

12 A Yes, certainly.

13 Q Would it be approximately the same annual income that
14 you received in 1961 or slightly less?

15 A Well, all the money that I have invested as income has
16 all been earned at Pabco.

17 Q In other words, all the stocks and bonds you own
18 were purchased before your termination at Pabco?

19 A Oh, yes.

20 Q When you say Pabco, you are referring to Fibreboard?

21 A Well, it is Pabco to me.

22 Q Very well. Now, you indicated that you were employed
23 in the Lake Tahoe area at a boat company. Is that Vernon
24 Cox Specialty Sales?

25 A ~~That's right.~~ He's the owner.

✓

1 Q Did you buy an interest in that business?

2 A No.

3 Q You were an employee?

4 A I was an employee, yes, sir.

5 Q Now, you stated on direct examination that from the
6 time you went to Lake Tahoe in May of 1960 up until the time
7 you returned to work at the Fibreboard Corporation in March
8 of 1965, you stated that during that period you made fre-
9 quent visits to the Bay Area; is that correct?

10 A I did.

11 Q On these visits, you visited the Union Hall of Local
12 1304, right?

13 A I did.

14 MR. PLANT: Objected to as leading.

15 MR. ROCHE: This is cross-examination. I will ask the
16 Trial Examiner to rule whether or not this is cross-
17 examination.

18 MR. PLANT: The question has already been answered
19 anyway.

20 MR. ROCHE: Isn't this cross-examination?

21 MR. PLANT: If you regard this man as my witness. I
22 called the man to the stand, but he is an adverse party in
23 the case. At any rate, the witness has already answered the
24 question.

25 MR. ROCHE: Well, I would like the answer again on the

1 record.

2 Q (By Mr. Roche) What is the answer, sir?

3 A Yes.

4 TRIAL EXAMINER: I think that there ought to be a
5 certain amount -- it is true, I guess he is an adverse
6 witness. However, there ought to be a certain amount of
7 restraint, let's say, on the part of the General Counsel.
8 However, I will overrule the objection, but I wish you would
9 keep that in mind, Mr. Roche.

10 MR. ROCHE: I wasn't trying to lead him. I wanted to
11 bring to mind the testimony on direct to get at my question.

12 Q (By Mr. Roche) During these visits to the Union Hall
13 between May 1960 and March 1965, did you make inquiries about
14 available work?

15 A Yes. ✓

16 MR. PLANT: Objected to as leading.

17 TRIAL EXAMINER: As a matter of fact, I think the
18 objection at this point is repetitious. I believe it has
19 all been gone over.

20 MR. PLANT: Before he said he dropped in to see Mr.
21 Ferber.

22 TRIAL EXAMINER: The record will speak for itself.

23 Q (By Mr. Roche) Let me ask the witness: What was your
24 purpose in dropping in to see Mr. Ferber?

25 A Well, probably for two reasons: One, just to say he

1 and to pass the time of day and to see what the opportunities
2 for work were.

3 Q Now, on any of these visits did you hear whether there
4 was work available for you? ✓

5 A I never got any favorable response.

6 MR. ROCHE: Could I have about a minute, Mr. Trial
7 Examiner?

8 TRIAL EXAMINER: Yes.

9 MR. ROCHE: I have no further questions.

10 MR. LEFF: No questions.

11 REDIRECT EXAMINATION

12 Q (By Mr. Plant) How many times did you come down to
13 San Francisco or the Bay Area from Lake Tahoe in 1961? ✓

14 A That I couldn't say truthfully because if I answered
15 that question it would be a guess.

16 Q Could you give me an approximation of the number of
17 times?

18 A Well, at least a half-dozen times. ✓

19 Q How many times in 1962? ✓

20 A Well, it would be the same there because maybe in
21 '62, maybe it was three times, maybe six times. Of course,
22 maybe I would come down to the Bay Area quite frequently,
23 but I wouldn't always stop in the Union.

24 Q Why would you come down to the Bay Area? X

25 A I have relatives in the Bay Area. ✓

1 Q That you would come down to visit?

2 A Yes.

3 Q Do you have any idea how many times you came down to
4 Bay Area in 1963?

5 A It would probably run about the same.

6 Q Three to six times?

7 A Three to six times. ✓

8 MR. LEFF: I object to the answers as being speculative
9 and guesses, and the witness testified that he can't remember
10 in any detail the number of times.

11 TRIAL EXAMINER: Is there anything before me that I
12 can rule on here?

13 MR. LEFF: I move to strike the answers of the last
14 three questions.

15 TRIAL EXAMINER: The motion is denied.

16 Q (By Mr. Plant) Was the same thing true in 1964 that
17 you came down from somewhere in the neighborhood of three
18 to six times?

19 A I would say that, yes.

20 Q Some of those times you didn't go to the Union Hall
21 to talk to Mr. Ferber?

22 A That's right. ✓

23 Q With reference to this matter of building houses up
24 at Tahoe, when did you finish that house up there?

25 A Well, I didn't finish it because Henry left before it

1 was quite finished.

2 Q Who is Henry?

3 A Norgard, the contractor. And I did all the inside
4 painting and all that myself after he left.

5 Q When did you move into it?

6 A We moved into it around the 1st of July. We lived in
7 the garage for about three weeks while I did the finishing
8 up of the bathroom -- the bathroom was in, but we lived
9 in the garage while I did finishing up work.

10 Q The 1st of July, 1960, is that it?

11 A Yes, 1960.

12 Q You say that Henry had left. Where did he go?

13 A He came back to here, to the Bay Area again.

14 Q So did you continue your efforts to find somebody
15 to build houses for you after he left?

16 A Yes.

17 Q How long did you continue?

18 A Oh, the rest of that year.

19 Q The rest of 1960, is that it?

20 A That's it.

21 MR. PLANT: No further questions.

22 RECROSS EXAMINATION

23 Q (By Mr. Roche) I would like to clear up one point that
24 was in the witness' direct examination. You indicated in
25 reply to Mr. Plant's question that you accepted reinstatement

1 at Fibreboard in March, and I assume you referred to March
2 1965, is that correct? ✓

3 A That's right. That was the first time we were called
4 back, because I was one of the first ones to go back.

5 MR. ROCHE: Nothing further.

6 TRIAL EXAMINER: How long did you work for Fibreboard?

7 THE WITNESS: 23 years ✓

8 TRIAL EXAMINER: Are you now receiving a pension from
9 them?

10 THE WITNESS: I applied for it on my 65th birthday,
11 which was this last September 22nd, but I haven't gotten my
12 first check yet.

13 TRIAL EXAMINER: No further questions.

14 MR. PLANT: No further questions.

15 Q (By Mr. Roche) Are you working at the present time, Mr.
16 Johnson?

17 MR. PLANT: Objected to as immaterial.

18 TRIAL EXAMINER: Overruled.

19 Q (By Mr. Roche) You may answer.

20 A Well, I am and I am not. Right now we are promoting
21 a private club up there. We have some acreage on the lake
22 which I am engaged in, and we are selling memberships, and
23 it is called Valhalla. ✓

24 We have 9.2 acres on Lake Tahoe, and there is quite
25 lot of work involved in something like this.

1 We have been working at it for the last year and a
2 half or so.

3 Q Are you working at this for profit?

4 A Eventually, I hope it will be.

5 Q Are you an owner of the property?

6 A I am a part-owner of the property, yes.

7 MR. ROCHE: No further questions.

8 MR. PLANT: Nothing further.

9 TRIAL EXAMINER: You are excused, sir.

10 (Witness excused)

11 MR. ROCHE: Can we go off the record?

12 TRIAL EXAMINER: Off the record.

13 (Discussion off the record.)

14 TRIAL EXAMINER: On the record.

15 MR. PLANT: I will offer into evidence the exhibits
16 that were marked for identification.

17 TRIAL EXAMINER: Your last exhibit I believe was 12,
18 the transcript of the contempt proceedings.

19 MR. PLANT: I will offer an exhibit as Respondent's
20 Exhibit No. 1 for identification.

21 TRIAL EXAMINER: Off the record.

22 (Discussion off the record.)

23 TRIAL EXAMINER: On the record.

24 MR. PLANT: I will offer an exhibit in evidence as
25 Respondent's Exhibit No. 1, the document which has been

SQUIRE FRIDELL

1
2 was called as a witness by and on behalf of the Respondent,
3 and, being first duly sworn, was examined and testified as
4 follows:

5 TRIAL EXAMINER: How do you spell your name?

6 THE WITNESS: F-r-i-d-e-l-l.

7 MR. PLANT: Now, if you will just bear with me a minute
8 while I get my papers in order.

9 MR. ROCHE: Are we on the record, Your Honor?

10 TRIAL EXAMINER: We are.

11 MR. ROCHE: If I understand correctly, this witness
12 and the witnesses following him will be put on the stand to
13 attempt to show misconduct on the part of employees Arca,
14 Beck, and Olson, and the General Counsel would object to the
15 receipt of such testimony on the basis that Respondent herein
16 could have, and perhaps should have, but didn't offer this
17 testimony in the original unfair labor practice proceedings.

18 TRIAL EXAMINER: I don't follow that at all.

19 MR. ROCHE: Well, in the original unfair labor practice
20 case the alleged misconduct of employees Arca, Beck, and
21 Olson was known to Respondent and was not, to my knowledge,
22 presented in evidence or testimony in any way.

23 TRIAL EXAMINER: Let's assume that is all true.

24 MR. ROCHE: Then assuming that is true, I would say
25 that the Respondent may have forfeited its right to introduce

1 this aspect of the case at this stage of the proceedings
2 since it has not been alleged or claimed or presented before.

3 TRIAL EXAMINER: Do you care to be heard?

4 MR. LEFF: Your Honor, the Union joins with that and
5 adds that the Board's decision that everybody be reinstated
6 is the law of the case and that applies to these three men
7 as well as all of the others.

8 MR. PLANT: Your Honor, I can reply very briefly. The
9 unfair labor practice charges were, as you know, that we
10 had refused to bargain, we had discriminated, were found
11 guiltless of discrimination. The charges all related to
12 what occurred on August 1, 1959. There is no charge relative
13 to any conduct on the part of Fibreboard with respect to
14 these gentlemen. That aspect of the matter was not tried.

15 Indeed, the contempt convictions occurred after that
16 hearing, if I am not mistaken. Then when the Board was
17 reconsidering the case we asked for leave to introduce
18 additional evidence as, for example, the reduction in the
19 number of jobs, and they said No, all this was proper for
20 the enforcement proceedings. I don't think that the Board's
21 decision, blanket order regarding reinstatement precludes the
22 introduction of evidence as to what occurred subsequent to
23 August 1, 1959, the date to which the charges related as to
24 what occurred.

25 MR. ROCHE: The General Counsel would submit that at

1 the time the Board was reconsidering the case, in other words
2 after the original case had been heard and decided by the
3 Trial Examiner, and decided by the Board, it was even, at that
4 time, too late to put in evidence or testimony concerning
5 misconduct of employees. I can certainly understand the
6 Board's view of that testimony with regard to economic
7 diminution of jobs within the bargaining unit is properly
8 considered in the back pay proceeding. On the other hand,
9 the eligibility of an employee for reinstatement and back pay
10 would have properly been part of the additional proceedings if
11 the employer wanted to show that certain individuals had
12 forfeited such rights, and the General Counsel's position is
13 that it was not introduced in the original proceeding, that
14 if there was a request to produce such evidence before the
15 Board at the time of reconsideration, it was already too late
16 at that time.

17 TRIAL EXAMINER: Let us suppose that last week before
18 this hearing began one of the discharges here was caught in
19 the act of committing arson on one of the Respondent's
20 properties, could the Respondent at this stage bring in the
21 fact that under those circumstances that they would not,
22 could not, as a matter of law, reinstate them?

23 MR. ROCHE: I don't believe so, Your Honor.

24 TRIAL EXAMINER: Objection overruled.

25 DIRECT EXAMINATION

• • •

R. C. THUMANN

was called as a witness by and on behalf of the Respondent,
and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Plant) Your name is what?

A R. C. Thumann.

Q What is your occupation?

A Director of Industrial Relations for Fibreboard
Corporation. ✓

Q That was formerly known as Fibreboard Paper Products
Corporation, was it?

A That is right.

Q How long have you held that position?

A Since 1949, about 18 years.

TRIAL EXAMINER: I have discriminated against this
witness. I haven't sworn him in.

(Thereupon, the witness was duly sworn.)

MR. PLANT: May it be stipulated that the answers to the
questions I have already asked be deemed to have been given
under oath?

MR. ROCHE: So stipulated.

MR. LEFF: Stipulated.

TRIAL EXAMINER: Noted and approved.

Q (By Mr. Plant) You held that position, did you, in
July of 1959?

1 A I did.

2 Q You are the R. C. Thumann that testified in the unfair
3 labor practice hearing in this case?

4 A I am.

5 Q In 1959, before the contractor made his advent, will
6 you tell us what unions Fibreboard dealt with over at the
7 Emeryville Plant?

8 A We dealt with, of course, Local 1304, the Oil Workers
9 Union, ILWU Local 6, the Pulp & Sulphide Union, the Printing
10 Specialties Union, the Electricians Union, Pipefitters Union,
11 Ironworkers Union, Teamsters Union; I think that is about it.

12 Q By what union or unions were the production employees
13 as distinguished from plant maintenance employees represented?

14 A There was Local 6, ILWU; Oil Workers Union; the Pulp &
15 Sulphide Union; Printing Specialties Union; I don't know
16 whether you called the Teamsters Union that did the hauling
17 as part of the production set-up.

18 Q Now, about how many men did you have in the plant, do
19 you recall, of production workers?

20 A Short of 900.

21 Q But over 800, I take it?

22 A Over 800.

23 Q And was the major part of those production workers
24 represented by one particular union or another?

25 A Yes, Local 6, ILWU.

1 Q And do you recall about what portion of them were
2 represented by the ILWU?

3 A Well, over 50 per cent. ✓

4 Q And what kind of work did these people do?

5 A They worked in our roofing department, master pave,
6 pipe wrap, granule department, and in industrial insullation;
7 they also had the warehouse.

8 Q Were there machines in all of these departments of one
9 sort or another?

10 A Yes, there were machines.

11 Q And who operated the machines?

12 A The ILWU people. ✓

13 Q Now, let's turn to the maintenance people; which ones
14 of these unions represented maintenance personnel?

15 A The 1304, East Bay Union of Machinists, the Electricians
16 Union, the Steamfitters Union, the Pipefitters Union, and the
17 Riggers.

18 Q You say the Riggers. You mentioned the Ironworkers
19 a while ago?

20 A Yes, that is the Riggers. I named them twice.

21 Incidentally, I would like to add another union in the plant
22 that I forgot, the Paintmakers Union.

23 Q They are also production employees?

24 A Production employees.

25 Q Now, I am going to show you something that I don't know

1 if you have seen before.

2 Mr. Thumann, I understand that there have been quite a
3 few changes in the physical plant since 1959, have there?

4 A That is right.

5 Q But directing your attention to 1959, was the plant
6 bounded on one side by Southern Pacific Railroad tracks?

7 A It was.

8 Q On which side?

9 A That would be on the east side.

10 Q And what direction did the tracks run?

11 A Parallel to the plant.

12 Q I know, but in what direction on the compass?

13 A They ran from south to north or north to south.

14 Q They ran in a northerly-southerly direction?

15 A That is right.

16 Q And the plant was on the west side of the tracks?

17 A That is correct.

18 Q Now, was there a street immediately across the tracks
19 from the plant?

20 A Yes, there was.

21 Q What was that street?

22 A I believe it was known as Overland Street or Avenue or
23 something.

24 Q And that ran parallel with the tracks?

25 A Correct.

1 Q North and south?

2 A That is right.

3 Q What was the next north-south street away from the
4 plant?

5 A That would be Hollis Street.

6 Q Then was there an entrance to the plant at the end of
7 the street called 64th Street?

8 A Right.

9 Q And in which direction did 64th Street run?

10 A From east to west.

11 Q And it ended at the plant, did it?

12 A It did.

13 Q The last part of it that is across the tracks, was that
14 paved or graveled?

15 A Across the tracks?

16 Q Yes, the last portion of it is across the tracks and
17 into the plant. Was that paved or a graveled road, do you
18 recall?

19 A I think there was asphalt up over the tracks and then
20 it became concrete as it entered the plant proper.

21 Q Now, I am going to show you a drawing. Will you take
22 a look at it:

23 TRIAL EXAMINER: Has it been marked for identification?

24 MR. PLANT: It has not been.

25 TRIAL EXAMINER: I would suggest that it be marked at

1 this time.

2 MR. LEFF: Your Honor, I would be prepared to stipulate
3 it may go in. I have seen it.

4 MR. ROCHE: The General Counsel would stipulate.

5 TRIAL EXAMINER: All right. This would be 13, would
6 it not?

7 MR. PLANT: I believe so. This is Respondent's Exhibit
8 13.

9 (The document above referred to
10 was marked Respondent's Exhibit
11 No. 13 for identification and
12 received in evidence.)

13 MR. LEFF: Your Honor, I would exclude from the exhibit
14 and I think Mr. Plant would agree -- certain identification
15 marks on it that are marked P-1, 2, 3, I believe.

16 MR. PLANT: Yes, I will take those up with a later
17 witness.

18 Q (By Mr. Plant) Now, if you just want to get that in mind?

19 A Yes.

20 Q Does that exhibit, Respondent's Exhibit 13, portray
21 the location of the plant with reasonable accuracy with
22 respect to the streets which you have mentioned?

23 A Yes, it does.

24 Q Now, you testified, did you not, in certain contempt
25 proceedings in the Superior Court over in Alameda County? ✓

A I did.

1 Q And have you reviewed your testimony that you gave in
2 that case?

3 A I have.

4 Q Has it been of any help to you in refreshing your
5 recollection as to the events mentioned therein?

6 A Yes.

7 Q Do they all come back to mind independently of that
8 transcript?

9 A They do.

10 Q Calling your attention to the date of August 10th,
11 1959, were you at the Emeryville Plant at any time during
12 that day?

13 A Yes, I was.

14 Q Can you give me the times at which you were there,
15 approximately?

16 A Yes, about 6:25 in the morning I drove down 64th Street
17 and stopped at that time on the northwest corner of 64th
18 and Hollis Street where the Chief of Police Doyle and
19 Sergeant Steeves and, as I recall, another officer was
20 standing.

21 I stopped to talk with them and in a few moments, after
22 I arrived there, I glanced around to see what the activities
23 were, what was on the street, and I noticed directly across
24 the street from me, which would be the northeast corner of
25 64th and Hollis Street, a group of machinists standing, and

1 in back of them there were probably 35 or 40 or more people
2 who I recognized as being employees of the linoleum department

3 Q By employees of the linoleum department, do you mean
4 personnel represented by the East Bay Union of Machinists or
5 do you mean Production Employees?

6 A Production Employees. They were the ones who made the
7 linoleum. They belonged to the Pulp & Sulphide Union.

8 Q You mentioned the Chief of Police. Of what town was
9 he a chief?

10 A Of Emeryville.

11 Q It is not a very large place, is it?

12 A No, it is not.

13 Q Now, did you recognize any of the 1304 people that you
14 saw there on that occasion?

15 A Yes, I did. I recognized some of them.

16 Q Who did you see there?

17 A I saw Mr. Stump, Mr. Arca, Mr. Furber, Mr. Lincoln
18 Beck, and Mr. Raineri.

19 Q Now, did you remain at the corner which you have
20 described for any length of time?

21 A Yes, I remained there for approximately a half-hour.

22 Q Now, will you just tell us what you observed while you
23 were standing on that corner?

24 A Yes. Within a few moments after I arrived there and
25 was talking with Chief Doyle and Sergeant Steeves, I noticed

1 Ray Bradford who was the International Representative of
2 the Pulp & Sulphide people coming down 64th Street toward
3 Hollis Street, and just before he arrived at the crosswalk
4 of 64th and Hollis Street, Lincoln Beck moved away from the
5 group of people that he was standing with and walked over and
6 placed himself directly in front of Mr. Bradford and began
7 shoving him back up the street. He shoved him at least
8 three or four steps before Mr. Bradford started in stumbling
9 as a result of this pushing. Chief Doyle jumped out of his
10 car and said to Sergeant Steeves, "Get that man away from
11 there," and Steeves and another patrolman went out to Lincoln
12 Beck and put him back across the southeast corner of
13 Hollis Street where he stood.

14 Q Where he stood?

15 A Lincoln Beck stood there. And then Mr. Bradford was
16 joined by Mr. Howes and by Lowell Thomas, who was the President
17 of the Pulp & Sulphide Union located there in the plant.

18 Q Who was?

19 A Thomas was President and Howes was an International
20 Representative of the Pulp & Sulphide Union..

21 Bradford left Thomas there, but he brought Howes along
22 with him over to the Chief of Police and he talked with the
23 Chief and he discussed with the Chief --

24 Q Now, pardon me before you go into that. Was this
25 within your hearing?

1 A This was within my hearing.

2 Q How many feet away were you?

3 A We were standing in a very close group.

4 Q All right. Continue and tell us what was said?

5 A Yes, I will. Mr. Bradford indicated that he wanted to
6 bring his people to work. They wanted to come to work and
7 he wanted the Chief of Police to help him out and see that
8 those people would come to work. The Chief replied that if
9 they wished to come to work they could come to work, and
10 Bradford asked him to remove the machinists who were standing
11 on the corner in front of his people so that they could come
12 to work, and Bradford also said he did not wish his people
13 escorted into the plant. He wanted them to come to work in
14 the usual fashion, and the Chief said if they wanted to come
15 to work, let them come to work.

16 And there was a moment or two of silence and Bradford
17 shrugged his shoulders and walked over to the group of
18 people who were standing in back of the machinists, and he
19 moved those people, or suggested they move in -- from the
20 motions of his hand I could surmise that -- move into the
21 parking lot where they grouped together, and apparently were
22 holding a meeting, which only lasted but a few moments, two
23 or three minutes at the most, and then Bradford left them
24 and came back across the street and joined Chief Doyle and
25 myself and Sergeant Steeves. He then said that his people had

1 decided not to make an effort to come to work as they had
2 been threatened. They were told that their porches would
3 be blown off and if it took six months to get them they
4 would be taken care of by the machinists or by someone.

5 MR. PLANT: I think I have no further questions.

6 TRIAL EXAMINER: Would you please remain in your seat
7 a few minutes?

8 (Short pause.)

9 MR. ROCHE: The General Counsel has no questions.

10 CROSS EXAMINATION

11 Q (By Mr. Leff) Mr. Thumann, I take it you reread your
12 testimony in the contempt proceedings?

13 A That is right.

14 Q Didn't you testify there that Mr. Beck pressed his body
15 against Mr. Bradford after Mr. Bradford came back and spoke
16 to the Chief of Police?

17 A No.

18 MR. PLANT: I will object to that as improper impeachment.
19 If counsel wishes to use his testimony on the prior contempt
20 proceeding, he should be shown the testimony and given an
21 opportunity to read the particular part which counsel has in
22 mind.

23 TRIAL EXAMINER: I believe counsel agrees with you. He
24 is stepping up here to show him the transcript.

25 Q ((By Mr. Leff) I am referring to Page 477, starting at

1 Line 9, and continuing to Page 470, Line 5.

2 A If you look to the front part of this you will find
3 where I described --

4 Q Now, let me ask the question, Mr. Thumann.

5 A All right.

6 Q Were those questions asked, and did you give those
7 answers, Mr. Thumann?

8 A Yes.

9 Q And in that testimony at that time you testified on
10 Lines 9, 10 to 13 about what Mr. Bradford said after talking
11 things over with his men?

12 A Yes.

13 Q And then line 14 you were asked, "Did they report to
14 work on that day?"

15 "Answer: They did not."

16 And then, Line 15, "Question: Now, you indicated that
17 Mr. Bradford started down 64th Street?

18 "Answer: That is right.

19 "Question: How far did he get?

20 "Answer: Almost to the crosswalk.

21 "Question: Of what street?

22 "Answer: On 64th Street.

23 "Question: Now, maybe you can show us on the diagram
24 where you mean by the crosswalk on 64th Street.

25 "Answer: Right about here.

1 "Question: Will you mark that with an X? Mark that
2 RT-2, your Honor?

3 "THE COURT: Yes, please.

4 "MR. HANCER: Question: What happened to Mr. Bradford
5 when he reached the crosswalk, Mr. Thumann?

6 "Answer: Say that again?

7 "Question: What happened to Mr. Bradford when he
8 reached the crosswalk?

9 "Answer: Mr. Beck, Lincoln Beck, walked out in front
10 of him, pressed his body against him, and started pushing him
11 back up 64th Street.

12 "Question: Were there any other persons in the street
13 at that time?

14 "Answer: Not that I can recall."

15 Was that your testimony at that time?

16 A That is right.

17 Q So this testimony was that Mr. Beck and Mr. Bradford
18 had their pushing when Mr. Bradford got back to you after he
19 had spoken to his men; is that right?

20 A No.

21 MR. LEFF: I won't argue with the witness, Your Honor.
22 The testimony speaks for itself.

23 MR. PLANT: Indeed it does.

24 Mr. Thumann --

25 MR. LEFF: Your Honor, I am questioning the witness.

1 MR. PLANT: I'm sorry, I thought you were through.

2 Q (By Mr. Leff) Mr. Thumann, when Mr. Beck and Mr.
3 Bradford met, they met belly to belly, didn't they?

4 A Well, of course, I was not parallel tothem so I
5 couldn't tell whether the bellies were belly to belly, but I
6 could see that he leaned against Mr. Bradford and started in
7 pushing.

8 Q He didn't use his hands, did he?

9 A I couldn't answer that because his back was turned and
10 I couldn't see his hands. Now, whether he had his hands on
11 Mr. Bradford's chest or not, I don't know.

12 Q You didn't see that he had his hands in his pockets?

13 A No, he did not have them in his pockets.

14 Q The two of them, Bradford and Beck, pushed back and
15 forth, didn't they?

16 A No, Bradford did not push.

17 Q You didn't see Mr. Bradford return the push at all?

18 A No, I did not.

19 Q In Mr. Bradford's discussion with the Chief of Police
20 in your hearing he didn't claim that his people weren't
21 coming to work because he had been pushed down the street,
22 did he?

23 A No, he did not.

24 Q So this little pushing incident that took place between
25 Mr. Beck and Mr. Bradford was not one of the reasons given

1 for the employees or members of the Pulp & Sulphide Union
2 not coming to work?

3 A You mean to the Chief of Police?

4 Q Yes.

5 A No.

6 Q I think you already testified that Ray Bradford was not
7 an employee of Fibreboard, that is right, isn't it?

8 A He is a paid representative of the International
9 Brotherhood of Pulp & Sulphide Workers.

10 MR. LEFF: No further questions.

11 REDIRECT EXAMINATION

12 Q (By Mr. Plant) Mr. Thumann, the questions and answers
13 which were read to you; were these after you related your
14 conversation or the conversation between Mr. Bradford and
15 the Chief of Police,

16 "Now, you indicated that Mr. Bradford started down
17 64th Street."

18 When had you indicated that?

19 A In an earlier part of my recitation of what occurred
20 just a few moments after I arrived there at 6:25.

21 Q And was the testimony which counsel read to you, did
22 it relate to that incident when Mr. Bradford first came down
23 64th Street?

24 A That is right.

25 MR. PLANT: I have no further questions.

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1 MR. LEFF: No further questions.

2 TRIAL EXAMINER: You are excused. Thank you.

3 (Witness excused)

4 MR. PLANT: Mr. Fridell.

5 Whereupon,

6 SQUIRE FRIDELL

7 was called as a witness by and on behalf of the Respondent,
8 and, having been previously duly sworn, was examined and
9 testified further as follows:

10 DIRECT EXAMINATION

11 MR. PLANT: Now, I believe we have sworn this witness,
12 have we not?

13 TRIAL EXAMINER: Yes, we have.

14 Q (By Mr. Plant). You stated, I think, in answer to my
15 last question, what your present job was, but you didn't say
16 who you were working for.

17 A I work for Fibreboard Corporation.

18 Q How long have you worked for Fibreboard Corporation?

19 A 32 years, 1936.

20 Q Where was your place of employment in July of 1959,
21 August of 1959?

22 A The Emeryville, California Plant.

23 Q Had you been there for some time?

24 A In and out of there for many years, yes.

25 Q By "many years" you mean?

1 A Since 1936.

2 Q Did you know a man named Arca?

3 A Yes.

4 Q Now, were you at the plant on August 19, 1959? ✓

5 A Yes.

6 Q At about what time did you arrive at the plant on the
7 19th?

8 A As I recall, I was in the plant all night.

9 Q On the morning of Wednesday, the 19th, did you go down,
10 go to the general area of 64th Street and Overland?

11 A I did.

12 Q Where did you go?

13 A I went to that area of 64th Street that was west of
14 the railroad tracks and within the Fireboard property,
15 confines.

16 Q Do you recall at about what time you arrived at that
17 area that morning?

18 A It was prior to 7:00 o'clock, as I recall. ✓

19 Q Were there any other people with you?

20 A Yes, there were.

21 Q Who were they?

22 A I believe that Al Barnes who was our Safety Director
23 at the time was there, and I believe that either Carl Crowell
24 or Mr. Bud Halverson was there at the time.

25 Q Were you in a car or were you standing out in the

1 street?

2 A I was in an automobile.

3 Q Whose?

4 A It was a company car, as I recall, a leased automobile
5 that was assigned to my use.

6 Q And you drove it to that point that morning, did you?

7 A Yes, as I recall.

8 Q And where were Mr. Crowell and Mr. Barnes in relation
9 to your car?

10 A I believe they were in an automobile behind me when I
11 arrived, yes.

12 Q How long did you stay there that morning?

13 A I stayed at that point, if my memory serves me, for
14 something over an hour, perhaps two hours.

15 Q Now, did you see any men congregated out in any of the
16 streets during the time that you were there?

17 A Yes, I did.

18 Q Will you describe what you saw?

19 A This is the morning of the 19th?

20 Q Yes.

21 A There were members of the 1304 Union at the picket line
22 which was immediately across the railroad tracks. There were
23 quite a number of individuals further east on 64th Street,
24 many members of the 1304 Union as well as other people that
25 were not members of the 1304.

Q Now, on the picket line immediately across the railroad

1 tracks, is that on Overland or the intersection of Overland
2 and 64th?

3 A Yes.

4 Q Were they standing in the street or where?

5 A They were both at the street as well as alongside the
6 streeton curb side.

7 Q Some of them were actually standing in the street?

8 A Yes.

9 Q Did you recognize any of those people?

10 A Yes.

11 Q Did you -- whom did you see?

12 A Well, in and around the area there were Carl Olson;
13 I believe that Mr. Lowell was there; Dave Arca was in the
14 area.

15 MR. LEFF: Your Honor, I object to the answer as not
16 being responsive. He was asked who were at the picket line,
17 and he is talking about people who were in the area.

18 Q (By Mr. Plant) By "area" you mean what?

19 A I mean the area at the picket line and in response to
20 your other question as to who was, were there others in the
21 area up the street a ways, yes.

22 At the picket line itself, if you would like me to
23 confine my answer to that --

24 Q Yes, the immediate location of the picket line that
25 is at Overland and 64th.

1 MR. LEFF: I move that the prior answers be stricken,
2 Your Honor.

3 TRIAL EXAMINER: Motion denied.

4 A I believe that Mr. Lowell and Mr. Olson, I believe that
5 Mr. Dave Wittorff -- I don't recall specifically who was
6 at the picket line at that time.

7 Q Now, the other group you mentioned was up the street a
8 ways?

9 A Further up the street, and as I say, in and around the
10 area, they were milling about, not at a specific location
11 for a specific duration of time. In fact, I believe the
12 pickets on the line changed during this period.

13 Q When you say "further up the street," further up what
14 street?

15 A 64th Street.

16 Q And about how far up the street were they, do you
17 recall?

18 A Yes, up to approximately the end of the Breuner's
19 parking lot which was perhaps 150 feet.

20 Q Now, did you recognize any of those men who were in the
21 circulating group further up the street?

22 A Yes, I did.

23 Q And who did you recognize?

24 A Dave Arca, I recognized a Mr. Bill Stumpf, Bill Giffin,
25 Lincoln Beck. I believe that Mr. Fusare was there that

1 morning, Mr. Vanderbeck.

2 Q Now, had you ever seen Dave Arca driving in any sort of
3 amotor vehicle prior to this morning?

4 A Yes.

5 Q Would you describe that vehicle?

6 A The vehicle was a pick-up truck. It was, as I recall,
7 a maroon or brown, reddish brown in color.

8 Q Where had you seen him driving it?

9 A In and around that immediate area during the prior
10 several days.

11 Q Did you observe Mr. Arca in that truck that morning?

12 A I did. ✓

13 Q That is the morning of the 19th? ✓

14 A I did.

15 Q Will you state what you observed?

16 A Mr. Arca's truck was parked on the south side of 64th
17 Street at the curb, and there was an automobile driving down
18 64th toward the Fibreboard property, moved along, Mr. Arca ✓
19 moved his truck from the curbside to the middle of the street,
20 blocking the automobile.

21 Q Did the automobile come to a stop?

22 A It did. ✓

23 Q What happened then?

24 A There was considerable milling about at that point. ✓

25 Many people were there and there were arms being flailed

1 about so there was considerable action taking place. ✓

2 Q Did you see anyone throwing any rocks?

3 A Yes, I did. ✓

4 Q Who did you see?

5 A I saw Bill Stumpf throw a rock.

6 Q At what did he throw it?

7 A He threw it at an automobile.

8 Q This is the automobile that was stopped by Arca's truck?

9 A No, it was not.

10 Q It was another automobile?

11 A It was another automobile.

12 Q It came along before or afterwards?

13 A I don't recall specifically whether it was before or
14 afterwards. I believe, however, that it was afterwards.

15 It was an automobile that came down Overland Street and made
16 a left turn onto 64th Street into our property.

17 Q Now, I am going to turn to another day. I am going to
18 call your attention to the morning of Friday, August 21, 1959.
19 Were you at the plant that morning?

20 A I was.

21 Q And do you know about what time you got to the plant?

22 A As I recall, I was at the plant all night.

23 Q Did you at any time on that morning go back to the
24 location which you have described?

25 A I did.

1 Q On the other side of the railroad tracks from Overland?

2 A At the plant side of the railroad tracks at approximately
3 the same location as I mentioned for the morning of the 19th.

4 Q Can you tell me at about what time you arrived at that
5 point?

6 A This was prior to 7:00 o'clock, as I recall.

7 Q How long did you stay?

8 A I stayed for something more than an hour.

9 Q Were there any pickets there on that occasion?

10 A There were.

11 Q And where were they stationed?

12 A They were stationed at the railroad tracks. The
13 pickets were at the railroad tracks area, yes.

14 Q Were there some people further down 64th Street?

15 A There were.

16 Q Did you see Dave Arca in this pickup truck that morning?

17 A I did.

18 Q Now, will you tell us just what you observed from the
19 time you arrived at that location until you left?

20 A After being there for a time looking up 64th Street,
21 it was obvious that there was considerable activity so far as
22 what seemed to be an assembling of automobiles and caravan
23 of automobiles starting down 64th Street.

24 MR. LEFF: I object to that as being the conclusion of
25 the witness. I think he should testify to what he saw.

1 MR. PLANT: Well, I think he has.

2 TRIAL EXAMINER: Well, I want to be sure, Counsel, that
3 I believe that is an exclusionary rule which has to do with
4 trying a case before a jury. I like to feel when I go over
5 this transcript that I will be able to get at facts as dis-
6 tinct from any situation which the witness is interjecting
7 into his answers.

8 MR. LEFF: Your Honor, one is handicapped in cross-
9 examination if the testimony is strictly conclusion and the
10 fact that it is not pointed out.

11 TRIAL EXAMINER: I will take that into account when you are
12 cross-examining.

13 Overruled.

14 Q (By Mr. Plant) Did you have any field glasses with you?

15 A I did.

16 Q Now, I take it from your last answer that you saw some
17 automobiles start in a line down 64th Street one behind the
18 other, do you mean?

19 A That is correct.

20 Q And by "down 64th Street" you mean toward the Fibreboard
21 Plant?

22 A That is right.

23 Q All right. Now, just describe what you saw from that
24 point on?

25 A Between the Overland and 64th Street intersection and

1 the Hollis Street intersection which was fully a block up the
2 street there were a considerable number of people at the
3 street area. Dave Arca's pickup truck again was parked on the
4 righthand or south side of the street, and as I recall, he
5 moved his truck up toward the center of the street as he had
6 done on the morning of the 19th, and a policeman talked with
7 Dave Arca at that point, and I saw Arca move his truck back
8 to the curb.

9 As the line of automobiles crossed Hollis Street and
10 got approximately to the Breuner's parking lot which was
11 midway between Hollis and Overland, Dave Arca again moved his
12 truck out into the center of the street and blocked the lead
13 automobile from what then was apparent to be a caravan of
14 automobiles. The group of automobiles were going quite
15 slowly. They came to a stop at that point. The first car
16 was blocked, jockeyed, and was able to swing around the pickup
17 truck and drove on into the plant. There were a considerable
18 number of men milling around these automobiles at that point,
19 the automobiles that were stopped. I saw the first automobile
20 being pretty well manhandled, rocked back and forth, and was
21 dumped over on its side.

22 Q And by the first automobile you mean the first
23 automobile after the one that came on into the plant?

24 A The first automobile that was left which would include
25 the second automobile that started the caravan. There were

1 a considerable number of things being thrown at the caravan
2 of cars. Once the police were there and on hand and they
3 were trying to do their best to break this thing up when this
4 automobile was spilled over on its side. The police were
5 able to move the crowd back so the remaining automobiles
6 could drive on in the plant and as I recall, there were
7 trucks involved, too, in this group of cars. They drove
8 into the plant at that time.

9 In the meantime, the car that was spilled over on the
10 side is still lying there. The police moved people that were
11 milling about back away from that immediate point. It wasn't
12 too long after that that the fire department came and both
13 firemen and policemen climbed up on the side of the automobile
14 that was tipped over and opened the doors, and there were
15 either three or four individuals that were helped out of the
16 car that was spilled over on the side. The car was righted;
17 as a tow truck moved it out of the way, the police department,
18 using fire hoses, cleaned the street of debris, broken glass,
19 and other objects that were there.

20 Q Could you tell us from what you observed when Mr. Arca
21 drove his pickup out in front of the caravan, the automobile
22 that was later overturned, whether his pickup came into
23 contact with any of those cars?

24 A It seemed to me, yes, that the first car that came
25 through was bumped by Arca's automobile.

1 Q How about the second one that was overturned?

2 A I could not see whether or not his car had made contact
3 with that second automobile.

4 Q Now, you say that you saw Arca there that morning.
5 Could you identify any other people that you saw that were
6 involved in this milling about the automobiles and so forth?

7 A Yes, I can. There was Mr. Lowell, Mr. Olson, Mr.
8 Furber I believe was there, Mr. Giffin, Mr. Beck, Mr.
9 Bradford, Mr. Cunningham, Mr. Fusare. I think that Joe
10 Vanderbeck was there, Joe Price.

11 Q Now, did you see any rocks thrown that morning?

12 A Yes, I saw a considerable number being thrown.

13 Q Did you see any thrown at the car that was overturned?

14 A Yes.

15 Q As it was laying on its side?

16 A Yes.

17 Q And who did you see throw a rock at that car?

18 A I saw Carl Olson throw a rock at that car.

19 Q How close was he to it?

20 A I guess he was somewhere, ten, fifteen feet, no more
21 than that.

22 Q And the men were still in the car?

23 A Yes.

24 Q By the way, those cars that came into the plant, who
25 were the men who were in them?

1 A There were floor maintenance people in them, and, as I
2 recall, the Pulp-Sulphide employees were. If my memory serves
3 me, I believe they were also part of this caravan. I know
4 that the maintenance, floor maintenance employees, were.

5 TRIAL EXAMINER: Would it be convenient to have a five-
6 minute break at this time?

7 MR. PLANT: Yes, Your Honor.

8 (Short recess.)

9 Q (By Mr. Plant) About how long a time was it, and
10 directing your attention to the car that was overturned,
11 about how long an interval was it between the time that that
12 car was brought to a stop by Mr. Arca's truck and the time it
13 was overturned?

14 A Within a five-minute period.

15 Q Was it as long as five minutes?

16 A No, I don't think it was. Probably two to three minutes.

17 Q At the outside or --

18 A That is just my best guess.

19 Q It could have happened faster, could it?

20 A Yes, it could have.

21 Q Did you see where the men that overturned the car
22 came from?

23 A From both sides of the street.

24 Q That is of 64th Street?

25 A That is correct. Perhaps most of them, however, from

1 the north side which was rather open. It is where the
2 Breuner's parking lot is located. There was more room for
3 individuals there.

4 Q As the other automobiles came into the plant from the
5 point where they had been brought to a stop initially, did
6 you observe any rock-throwing at them?

7 A Yes.

8 Q What did you observe?

9 A I observed a lot of catcalling and things being thrown
10 at these trucks, cars.

11 MR. PLANT: I think that is all I have. You may
12 cross-examine.

13 CROSS-EXAMINATION

14 Q (By Mr. Roche) You stated on direct examination, Mr.
15 Fridell, that either Mr. Barnes or Mr. Crowell was there with
16 you on the morning of August 19th.

17 A I said that Mr. Barnes was there and either Mr.
18 Halverson or Mr. Crowell.

19 Q And what was Mr. Barnes, I believe, on both mornings
20 had a movie camera and he took movies of several things that
21 happened at the intersection.

22 Q Now, what was either Mr. Crowell or Mr. Halverson doing
23 on the morning of the 19th?

24 A I believe it was Crowell that was with me on the 19th
25 and he was sitting in an automobile with me.

1 Q He was sitting in your car?

2 A Yes.

3 Q And where was Mr. Barnes?

4 A I think Mr. Barnes went over to our refinery area
5 inside of our plant properties, as I recall.

6 Q Was he taking moving pictures there?

7 A Yes.

8 Q Now, you testified that on the morning of the 19th you
9 saw this reddish or brownish pickup truck in which Arca had
10 been seendriving previously, is that right?

11 A Yes.

12 Q Did you actually see Mr. Arca in the truck on the
13 morning of the 19th or did you just see the truck?

14 A I saw Arca.

15 Q You saw Arca?

16 A Yes, I did.

17 Q Did you see him in the truck?

18 A Yes, I saw him get out of the truck, I did. As I
19 recall --

20 Q Are you testifying that Arca's truck --

21 MR. PLANT: Just a minute. The witness hadn't finished
22 his answer. He said, "As I recall," and then you interrupted
23 him.

24 Q (By Mr. Roche) Go ahead, Mr. Fridell.

25 A As I recall, he raised the hood of his truck while it

1 was out on the street.

2 Q Now, how far away from Mr. Arca's truck were you at that
3 time?

4 A 100 to 150 feet.

5 Q Were you using your binoculars?

6 A Yes.

7 Q Were you using your binoculars throughout this entire
8 incident?

9 A Yes.

10 Q You definitely recognized Mr. Arca getting out of the
11 truck and raising the hood; is that right?

12 A That is the way my memory serves me, yes.

13 Q You testified that when Arca drove to the middle of the
14 street on August 19th there was much milling about. How many
15 people were there milling about?

16 A 30 to 40.

17 Q And do you know who these people were or who any of
18 them were?

19 A Some of them, yes.

20 Q And were they members of Local 1304, some of them?

21 A Yes.

22 Q And do you know what the cause of their milling about
23 was?

24 A Yes.

25 Q I asked the question because I don't see any connection

1 between a car stopping in the middle of the street and a
2 great deal of milling about. Maybe you could explain for us.

3 A Yes. There was an automobile that was attempting to
4 drive into the plant that was stopped at that point.

5 Q Were these people milling about that automobile?

6 A Yes.

7 Q You testified that on August 19th you saw Mr. Stumpf
8 throw a rock at a car, correct?

9 A Yes.

10 Q Now, how far away from Mr. Stumpf were you at that time
11 when you saw that?

12 A I was right across the railroad tracks, perhaps 50 feet

13 Q Now, were you using your binoculars when you observed
14 Mr. Stumpf throw something?

15 A I don't believe I was, no, sir.

16 Q Now, do you know for certain that Mr. Stumpf threw a
17 rock, or could it have been some other object?

18 A It appeared to be a rock. I don't know precisely that
19 it was a rock. I did not see it after it was released.

20 Q Do you know whether it hit the car?

21 A I don't know for sure, no. It was thrown at the
22 automobile.

23 Q He was throwing it toward the automobile?

24 A At the automobile, yes. He was close enough to hit it.

25 Q How far away was Mr. Stumpf from the car?

1 A 15 feet.

2 Q Calling your attention to the incident of Friday,
3 August 21, now you testified that you saw Arca in his pickup
4 truck. Where was the pickup truck located?

5 A It was located on the south side of 64th Street.

6 Q And, therefore, it was pointed east; it was facing east?

7 A It was pointed west.

8 Q In other words, it was pointed toward the plant?

9 A Yes, as I recall, it was.

10 Q And where was Mr. Arca?

11 A While it was parked there?

12 Q Yes.

13 A Mr. Arca, during that morning, was in and about the
14 immediate area. I don't know precisely where he was at the
15 time the car was parked there until such time as he was in
16 and moving it back toward the car that was coming.

17 Q Now, prior to the time that Arca moved his truck to the
18 middle of the street, did you see him get in the truck?

19 A No, I did not.

20 Q Can you definitely state under oath that it was Arca who
21 moved the truck to the middle of the street?

22 A I believe that it was. I saw him. Someone appeared
23 very, very precisely to have Arca's appearance.

24 Q How long had you known Mr. Arca before this time?

25 A 20 years, perhaps.

1 Q 20 years?

2 A 15 or 20 years.

3 Q Now, you knew in advance that the caravan would be
4 forming that morning at 64th and Hollis, did you not?

5 A I think that I did, yes.

6 Q This had been planned in advance and the company was
7 aware of the fact, is that right?

8 MR. PLANT: You mean this witness was aware of the fact?

9 MR. ROCHE: Yes, sir.

10 THE WITNESS: I am guessing, so I don't know this
11 for sure. As my memory serves me, however, I do recall that
12 yes, there were going to be some folks coming in the plant.
13 It was not my decision, however.

14 Q (By Mr. Roche) And, to your knowledge, the caravan was
15 formed in order to break through the picket line, is that
16 correct?

17 A The caravan was formed in order for people to come into
18 work.

19 Q Well, not to play with words, Mr. Fridell, it would be
20 possible for people to come to work individually or in separate
21 cars without a caravan. I was asking you, to your knowledge,
22 if the caravan was formed in order to successfully break
23 through the picket line?

24 MR. PLANT: I object to that as calling for a conclusion
25 of the witness without any proper foundation of knowledge

1 having been laid. You are asking him what was in the mind of
2 the men who formed the caravan.

3 MR. ROCHE: I am asking he if he knows, Mr. Trial
4 Examiner.

5 MR. PLANT: That, in itself, calls for a conclusion.

6 TRIAL EXAMINER: It seems to me that you should go back
7 a ways and attempt to find out whether or not, if that is
8 what you are attempting to do, whether the company in the
9 guise of the witness here knows of his knowledge if any plans
10 were made at the instigation or with the knowledge of the
11 company to form such a caravan, and I think proceed from that
12 point on.

13 MR. ROCHE: I think, Mr. Trial Examiner, the witness
14 already testified that the company had such knowledge, that
15 he had such knowledge, that it was not his decision.

16 Q (By Mr. Roche) Isn't that correct, Mr. Fridell?

17 A I had such knowledge that a caravan was going to be
18 formed?

19 Q Right.

20 A Not precisely. I knew that the floor maintenance group
21 were attempting to come into the plant and I don't recall
22 knowing specifically that a caravan was going to be formed at
23 a specific time to be brought into the plant nor was there
24 really any occasion for me to know this as such.

25 Q Do you know whether the formation of a caravan was

1 suggested by Fibreboard management?

2 A I don't know that.

3 Q Now, you stated that the first car in the caravan swung
4 around the truck and then drove into the plant?

5 A Yes.

6 Q And which side did it pass the truck on?

7 A It passed it on the right, which is then the north side.

8 Q Now, with regard to the second car in the caravan, you
9 testified that a considerable number of things were thrown.

10 Can you be a little more specific on the considerable number?

11 A By that I don't mean different types of objects.

12 Q I am asking you to be more specific on a considerable
13 number, whether it is five or a hundred or a thousand or what
14 ever.

15 A Well, if I were pressed for a number I would guess that
16 there were probably 50 objects thrown at the automobiles.

17 Q Do you know what any of these objects were?

18 A No, I do not know precisely what these objects were. I
19 made some assumptions at the time.

20 Q Now, you stated that the men who tipped the second car
21 over on its side came from both sides of the street, and I
22 believe you testified also the car was tipped over on its
23 left side so that the driver's side was down, is that correct?

24 A I don't recall having said that.

25 Q Is that true, though; do you know which side was, which

1 side was it tipped on, Mr. Fridell?

2 A I am just trying to get a mental picture, if I may,
3 here for a moment.

4 Q Take all the time that you need.

5 A Thanks. I believe the car was tipped over on its right
6 side.

7 Q Now, if the men came from both sides of the street, I
8 would like you to explain, if you can, how the men on the
9 right side could have assisted in turning it over.

10 A The reason that I seem to believe, if my memory serves
11 me over some eight years, that it was tipped over on its right
12 side at the time I was watching, I was pretty darn apprehensive
13 about the individuals who were actually pulling this automobile
14 over on its side that, by golly, if this thing goes over,
15 somebody is going to get trapped beneath that automobile.
16 It is going to tip over on them because they were pushing from
17 one side and actually pulling on the other, and as luck would
18 have it, fortunately no one was caught underneath the
19 automobile as it was tipped over.

20 Q Do you have any knowledge about the people who did
21 the tipping of the car?

22 A No, but I was quite apprehensive about the people
23 underneath.

24 Q You were watching the car-tipping through binoculars
25 also?

1 A Yes.

2 Q And how far was the car away when you were watching?

3 A Oh, 150 feet, perhaps.

4 Q Did you see who was driving the car?

5 A No.

6 Q Did you identify any of the people on either side of
7 the car who were engaged in the tipping?

8 A Precisely, no. I don't recall precisely any individual
9 who had his hands on the car tipping it.

10 Q Now, you testified on direct that it seemed to you that
11 Arca's car came into contact with the first car in the carava
12 I wonder if you can elaborate on that. Was your view actual
13 blocked by the fact that Arca's car was closer to your line
14 of vision and the other car was out of your line of vision?

15 A They were both in my line of vision. Arca's car moved,
16 when it moved into the line of vehicles, was partially
17 obstructed in my view of the line of vehicles. If there was
18 contact it was at a point where Arca's truck blocked the
19 opportunity for me to see it, if that is clear.

20 Q So would it be correct to say that you are not certain
21 whether Arca's car contacted that first car at all?

22 A That is absolutely correct.

23 Q In your direct testimony you stated that a considerable
24 number of rocks were thrown at the second car. Would you
25 elaborate on that; how many rocks, approximately?

- 1 A This is the automobile that was tipped over. I said
2 there were approximately 50. Pressed for a number, I would
3 say 50.
- 4 Q Were any rocks thrown at it before it was tipped over?
- 5 A Yes.
- 6 Q Were any rocks thrown at it after it was tipped over?
- 7 A Yes.
- 8 Q Are you certain that all of the objects thrown at the
9 car were rocks?
- 10 A No.
- 11 Q You stated on your direct testimony that you saw Carl
12 Olson throw a rock at the second car?
- 13 A Yes, sir.
- 14 Q You also stated that Mr. Olson was 10 or 15 feet away
15 from the car at the time he threw the object?
- 16 A Yes.
- 17 Q Now, are you certain that Mr. Olson threw a rock or
18 was it some other object, possibly?
- 19 A I am not certain it was a rock.
- 20 Q He did throw an object, though?
- 21 A He did.
- 22 Q Did you observe whether the object thrown by Mr. Olson
23 actually came in contact with the car?
- 24 A I don't know that for sure.
- 25 Q You did know, Mr. Fridell, didn't you, that all of the

1 cars in the caravan contained employees of the Fluor
2 Maintenance Company and Sulphide Workers?

3 A I did not.

4 MR. PLANT: I object to the question on the ground that
5 it doesn't fix the time. He didn't know this when?

6 MR. ROCHE: At the time you were observing the caravan,
7 you didn't know at that time.

8 THE WITNESS: No.

9 Q (By Mr. Roche) You later learned of that fact, though,
10 is that right?

11 A Yes.

12 Q Now, where was Mr. Carl Olson standing, or where was
13 he located at the time he threw an object at the second car?

14 A He was on the south side of the automobile.

15 Q Is there a sidewalk there, Mr. Fridell?

16 A No, I don't believe a sidewalk is there on that side
17 of the street at that point.

18 Q Was he on the extreme south side of the street?

19 A No, he was in the street.

20 Q He was in the street?

21 A Yes, on his side or the south side of the center of the
22 street.

23 Q How wide is the street, would you say?

24 A I will guess that the street is 60 feet wide, 50 feet
25 wide.

1 Q And had the car been tipped at the time Mr. Olson threw
2 an object?

3 A If my memory serves me, yes, it was.

4 Q Mr. Fridell, do you know for a fact that it was David
5 Arca driving the truck at the time that the truck was closely
6 in front of the caravan?

7 A Yes.

8 Q How do you know that?

9 A If my memory serves me, David Arca is the man that drove
10 this truck out to the center of the street and blocked the
11 traffic.

12 Q Well, now, in the other incident which you testified
13 that Mr. Arca moved his truck out from the curb into the middle
14 of the street, you testified that he got out of the truck, and
15 you saw him at that time; is that right?

16 A Yes.

17 Q Now, at the time the truck blocked the progress of the
18 caravan, the rear of the truck was toward you, isn't that right?

19 A Yes.

20 Q And, therefore, it was not possible for you to see the
21 face of the person that was driving even with your binoculars,
22 isn't that right?

23 A That is right.

24 Q So you can't state definitely that Mr. Arca was at
25 the wheel of the truck at that time?

1 A I can say definitely that he was at the wheel of that
2 truck immediately before that.

3 Q When the car was at the curb?

4 A When the car was moved back to the curb by the policeman
5 advised to get back there.

6 Q Now, during this caravan incident, did you observe Mr.
7 Lincoln Beck at any time?

8 A I remember Lincoln Beck being in the group there. As
9 my memory serves me, yes, he was there. I don't recall him
10 specifically doing anything specific.

11 Q But he was present?

12 A He was part of the group, yes.

13 Q He was on 64th Street?

14 A As I recall, yes.

15 Q Do you know what side of the street he was on?

16 A No.

17 Q How close were the cars together in caravan, Mr. Fridel?
18 in other words, what space separated the cars?

19 A They appeared to be quite close.

20 Q Almost bumper to bumper?

21 A It was difficult for me to see as they were heading toward
22 me.

23 Q Did they seem to be almost bumper to bumper?

24 A It was very close, yes.

25 MR. ROCHE: No further questions.

1 Mr. Leff?

2 Q (By Mr. Leff) Mr. Fridell, referring to the August 19th
3 incident involving Dave Arca and his truck, about how far
4 from Dave Arca's truck was this other car that was coming down
5 64th Street at the time it stopped?

6 A About how far away was the car when Arca's truck
7 stopped it?

8 Q Well, all right, put it that way.

9 A How far away from what, Arca's truck?

10 Q Arca's truck was the car that stopped.

11 A As I recall, they were together.

12 Q The police ordered Arca to move his truck back to the
13 curb, didn't they?

14 A Yes.

15 Q And he did, didn't he?

16 A Yes.

17 Q The car that was coming down 64th Street and Arca's truck
18 never came in contact, did it?

19 A I don't know that for sure.

20 Q Did you see Arca get out of this truck?

21 A As I recall, yes.

22 Q This is after he moved it back to the side of the road?

23 A As I recall, yes.

24 Q Did he join the milling crowd?

25 A I don't know specifically whether he did or not.

1 Q So the only thing you saw Dave Arca do was drive his
2 truck up and then drive it back, is that right?

3 A I saw him in and around the area during the period so
4 that was not the only thing I saw him do.

5 Q Well, what else did you see him do?

6 A I saw him in and around the area.

7 Q But except for seeing him in and around the area and
8 driving his truck up and back, that is all you saw him do?

9 A Yes, sir.

10 Q Now, I am probably confused, Mr. Fridell, but at one
11 point did you say that Mr. Arca's truck was pointed toward the
12 plant?

13 A Yes.

14 Q On the 21st?

15 A I'm trying to reconstruct. I know I was asked about bot
16 the 19th and the 21st. In both instances Arca's truck
17 effectively blocked automobiles. As my memory serves me, on
18 one of these days his truck was pointed toward the plant. On
19 the other day it was pointed away from the plant.

20 Q My notes indicate that you testified on the 21st incident
21 and that is the one I am talking about now, Arca's truck point
22 toward the plant?

23 A I believe that is correct, yes.

24 Q Now, was there some time that he turned it around or
25 maybe I am not reconstructing the situation.

1 A As my memory serves me, and this was a hint of confusion
2 when the other gentleman got quite specific about whether the
3 rear of the truck or the front of the truck was facing me.

4 On the 21st the truck was backed into the line of vehicles.

5 Q So the back of Arca's truck, your testimony is, is the
6 part of the truck that was facing the caravan?

7 A As I recall, yes. I must apologize for having to be
8 this vague about it.

9 Q And then the first car of the caravan went around
10 Arca's truck and then the second car was the one that was tipped
11 over, is that it?

12 A That is correct.

13 Q Now, I think you testified that you didn't know if there
14 was any contact between the second car and Arca's truck?

15 A I do not know that.

16 MR. PLANT: The record will show what he testified.

17 MR. LEFF: This is cross-examination, Mr. Plant.

18 MR. PLANT: I don't care what it is. Cross-examination
19 involves the right to ask questions, not to state as a fact
20 something that the witness has previously testified to.

21 MR. LEFF: I think this witness understood my question.

22 MR. PLANT: I understood your question, too. It wasn't
23 a question. It was a statement.

24 TRIAL EXAMINER: I will suggest to counsel, rather than
25 making the bald statement you testified so and so, you might

1 word it to say, "Did you testify on your direct?" and then
2 we can get an answer of him as to whether he did or not, and
3 then have a firm premise from which to bottom your next
4 question.

5 MR. PLANT: Your Honor, with all due respect to you, I
6 will object to that. The record will show what he testified.

7 TRIAL EXAMINER: I'm afraid you will have to accede to
8 my suggestion from the standpoint of I think it will
9 eliminate a good deal of this verbal scurmishing because
10 very often when the question is voiced to the witness "you
11 testified," he will very often say, "No, I didn't," and I
12 think we can obviate all that by counsel's stating, "Did you
13 testify?" and if he didn't, let him say what he did testify
14 to.

15 MR. LEFF: I haveno further questions, Your Honor.

16 REDIRECT EXAMINATION

17 Q (ByMr. Plant) Mr. Fridell, on the 21st in the so-called
18 caravan of automobiles which was coming down 64th, have you a
19 idea how fast it was traveling?

20 A Very slowly, I will guess five miles an hour at the
21 most.

22 TRIAL EXAMINER: Does counsel want a little time to
23 examine that?

24 MR. LEFF: Yes, sir.

25 TRIAL EXAMINER: Very well. We will take a few minutes.

1 I wish you would remain in your seats.

2 MR. PLANT: I have here two what appear to be prints
3 from a motion picture film. They have been marked for iden-
4 tification in the case of Fibreboard Products, et al. versus
5 the East Bay Union of Machinists. I will ask that the one
6 which has been marked Exhibit 6 in that case be marked
7 Exhibit 14 for identification here. That is Respondent's 14,
8 and that the picture which has been marked Exhibit 5 in that
9 other case be marked Respondent's Exhibit 15 for identification
10 here.

11 (The documents above referred to
12 were marked Respondent's Ex-
13 hibits 14 and 15 for identifica-
14 tion.)

15 Q (By Mr. Plant) Will you examine 14 and 15 for identifi-
16 cation, please, Mr. Fridell? Now, 14 for identification
17 shows what appears to be an automobile in the process of
18 being overturned. Will you state whether or not that is an
19 accurate depiction of what occurred on the morning of the 21st?

20 A It is.

21 Q In the light of that picture, do you care to revise your
22 testimony as to which side it was turned on?

23 A I certainly do. This automobile is being turned over
24 on its left side, or the driver's side.

25 MR. LEFF: Your Honor, the photograph hasn't been
introduced in evidence and yet the witness is using it to

1 that anything that might arise during the course of Respon-
2 dent counsel's examination on the basis of the photograph,
3 that you might want to ask additional questions.

4 MR. ROCHE: Thank you, Your Honor.

5 TRIAL EXAMINER: You understand that?

6 MR. LEFF: I think I do. I am not sure.

7 TRIAL EXAMINER: Then I will explain it to you again.
8 I say out of deference to you I am not going to rule on its
9 admissibility now. Counsel may ask the witness on the basis
10 of this photograph but there may be some additional questions
11 you may want to ask on the basis of these additional questions
12 if there are any with reference to the photographs and at
13 that point you may want to ask the additional questions.
14 Now, I will reserve ruling out of deference to you in order
15 to anticipate if there does arise, that you want to ask these
16 questions, and then I will rule.

17 Do you understand now?

18 MR. LEFF: Yes, sir, I do.

19 TRIAL EXAMINER: Very well.

20 Q (By Mr. Plant) In what direction from you was Mr.
21 Barnes stationed when he was taking these pictures?

22 A He was south of me, to my right.

23 Q And he was using a movie camera?

24 A Yes.

25 Q Now, still referring to Respondent's Exhibit No. 14 for

1 identification, does that show Mr. Arca's pickup truck?

2 A Yes.

3 MR. LEFF: I object, Your Honor, to that characteriza-
4 tion. I think the photograph speaks for itself. I think
5 it shows a gray mass there that somebody might interpret as
6 a pickup truck, and I certainly don't.

7 MR. PLANT: Well, I just asked the witness whether it
8 was. He is competent to testify to that.

9 TRIAL EXAMINER: I think it would be helpful to me.
10 I don't know Arca's truck, and if the witness can testify as
11 to whether it is or isn't, then I can make any inferences or
12 conclusions from that point, but I would like to have that
13 in the record, and I think since the witness has testified
14 he witnessed all this, that he is competent to testify with
15 respect to it.

16 Objection overruled.

17 MR. PLANT: Will you read the question back, please?

18 (Record read.)

19 Q (By Mr. Plant) And where is Mr. Arca's pickup truck
20 with relation to the automobile being overturned?

21 A It is west of the automobile being turned, and a bit off
22 to its left, south and west.

23 Q Is it the automobile next behind the police car shown
24 in the photograph?

25 A It is.

1 Q And in what direction is it pointed?

2 A It is pointed northeast.

3 Q Now, would you care to revise your testimony as to
4 whether you could see from your vantage point who was driving
5 that truck at that time?

6 A Yes.

7 Q And what is your testimony?

8 A I could see who was driving the truck at that time
9 because the driver's side is immediately facing my vantage
10 point.

11 Q And who was driving?

12 A Dave Arca.

13 Q Now, I am going to show you Respondent's 15 for iden-
14 tification and ask you if that is an accurate representation
15 of the scene that morning after the automobile had been over-
16 turned?

17 A Yes, it is.

18 Q And at the time that picture was taken, at the time
19 that scene occurred, where was Mr. Arca's truck?

20 A Mr. Arca's truck was over on the south side of the
21 street.

22 Q It had been taken out of the way, had it?

23 A Yes.

24 MR. PLANT: I will offer exhibit for identification
25 R-15 in evidence as Respondent's Exhibit 15.

1 MR. LEFF: Same objection.

2 MR. ROCHE: Same objection.

3 TRIAL EXAMINER: Now, do you want me to reserve ruling?

4 Do you have any further questions that you want to ask this
5 witness which will be helpful for me in deciding whether to
6 admit it or reject it?

7 MR. ROCHE: I may have a question.

8 Did you finish your redirect, Mr. Plant?

9 MR. PLANT: Yes.

10 RECROSS EXAMINATION

11 Q (By Mr. Roche) Now that you have seen the two photo-
12 graphs, Mr. Fridell, do you also want to revise your testimony
13 that the truck owned by Dave Arca backed into the caravan?

14 A Yes.

15 Q It did not back into the caravan?

16 A No, it is obvious from the photographs it is facing
17 toward the caravan.

18 MR. ROCHE: No further questions.

19 TRIAL EXAMINER: Anything further before I rule on the
20 exhibits?

21 If nothing further, Respondent's 14 and 15 will be
22 received in evidence. The objections of counsel are overruled.

23 (The documents above referred
24 to, heretofore marked Respon-
25 dent's Exhibits 14 and 15,
were received in evidence.)

1 sworn?

2 TRIAL EXAMINER: Come forward, sir.

3 Whereupon,

4 LUTHER SHOCKEY

5 was called as a witness by and on behalf of the Respondent,
6 and, having been first duly sworn, was examined and testified
7 as follows:

8 TRIAL EXAMINER: Be seated, please. Proceed, Mr. Plant

9 DIRECT EXAMINATION

10 Q (By Mr. Plant) What is your full name, please, Mr.
11 Shockey?

12 A Luther Shockey.

13 Q How old are you?

14 A 72.

15 Q And where do you live?

16 A In Concord, 5272 Ida Drive, Concord, California.

17 Q Were you at one time employed by Fluor Maintenance
18 Co.?

19 A I was.

20 Q Were you employed by that company on August 21, 1959?

21 A I was.

22 Q Where were you scheduled to work that day?

23 A Pardon?

24 Q Where were you scheduled to work that day?

25 A Pabco Plant.

- 1 Q That is Fibreboard?
- 2 A Fibreboard, Pabco, yes.
- 3 Q Down in Emeryville? ✓
- 4 A Yes.
- 5 Q Now, did you go to work on that day?
- 6 A We did.
- 7 Q Did you go in company with any other Fluor employees?
- 8 A I did.
- 9 Q Will you state where you met the other employees?
- 10 A On 64th and San Pablo.
- 11 Q About how many of them were there, do you recall that,
- 12 gathered there?
- 13 A Well, there was four in the car that I was in. There
- 14 were other cars, six or eight, I don't know how many.
- 15 Q You say there were more than eight cars?
- 16 A I think there was, yes. I am not positive, I don't
- 17 know.
- 18 Q Do you know how many there were?
- 19 A No.
- 20 Q Now, did those cars then proceed to the old Pabco
- 21 Plant or Fibreboard Plant?
- 22 A They did.
- 23 Q By what route?
- 24 A Down 64th.
- 25 Q Were they in a single file or abreast?

1 A They were in single file.

2 Q And in what car were you riding? What place in line
3 was it?

4 A I was in the second car.

5 Q Who was driving it?

6 A The owner of the car, a man by the name of Paul Vargas.

7 Q Where were you seated?

8 A In the seat with the driver.

9 Q On the righthand side?

10 A Yes.

11 Q Were there also some men in the rear seat?

12 A There were.

13 Q Do you recall how many?

14 A There were two.

15 Q Now, as you proceeded down San Pablo -- pardon me --
16 down 64th Street, and approached Hollis Street where it
17 intersects 64th, that is, would you state what you observed?

18 A Well, there was quite a large number of men both on
19 the sidewalk and in the street and on both sides of the
20 street, 150 approximately on the righthand side.

21 Q What street is this?

22 A 64th.

23 Q Was that between Hollis and the Fibreboard Plant?

24 A It was.

25 Q When you came in sight of this group of men, about how

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1 fast were you traveling?

2 A Well, we crossed the intersection at Hollis when we
3 were going approximately 10 miles an hour. ✓

4 Q Did you slow down any further?

5 A We did. ✓

6 Q Now, will you state what occurred from that point on?

7 A Well, the car ahead of us made a dive to miss a truck
8 that pulled out from the side, and when they did that, a guy
9 standing about 10 feet away had a chunk of concrete in his
10 hand and he threw it at the window and I ducked down to ✓
11 keep from getting it, and when I straightened up and picked
12 myself up, we hit the truck and, well, it threw me down on
13 the bottom of the car by the driver's feet, and before I got
14 straightened up the car was tipped over on the driver's side.
15 Some policemen came by and said, "Just stay put; the fire ✓
16 department is coming, I'll get you out."

17 We were in there, I don't know, but it seemed longer
18 than it probably was. I would say three or four or five
19 minutes, and a guy came with a bar, came up on the car and
20 pried the door open. We climbed out and when I got out,
21 the policeman outside said, "Get going."

22 We went into the plant. ✓

23 Q You went on into the plant? .

24 A Yes.

25 Q Now, before you were hit by this pickup truck, you

1 said there was one piece of concrete that came through the
2 window?

3 A It hit the window and pieces of glass came inside.

4 Q Had there been any objects thrown at the car before that?

5 A There had been. I would say four or five. You could
6 hear them hitting the side of the car, but I wasn't trying
7 to count them at that time.

8 Q Would you be able to tell whether or not they were
9 mud balls?

10 A It didn't sound like mud balls to me.

11 Q It was solid objects?

12 A Solid objects that hit the car, yes.

13 Q Now, what happened to the car -- were you second in
14 line?

15 A Yes.

16 Q What happened to the car immediately ahead of you when
17 this pickup truck appeared?

18 A It passed the pickup truck and went on into the yard.

19 Q It got by the pickup?

20 A Yes.

21 Q What color was this pickup?

22 A I would call it a rusty color. What I could see of it,
23 it looked like it was rusty. I didn't see it but just a
24 second, but it was kind of brownish looking.

25 Q Did it hit your car square head on or at an angle?

1 A Kind of at an angle.

2 Q It came in from which side of your car?

3 A It came in from kind of the driver's side.

4 Q In other words, it came from the lefthand side of your
5 car?

6 A Yes.

7 Q And it hit the front of your car at an angle?

8 A Yes, at an angle.

9 Q Is that it?

10 A Yes, that's it.

11 Q Among the group that went in that morning in these
12 cars that you described, was there a man named William Cole?

13 A Yes, there was.

14 Q Did you know him?

15 A Yes, he was the Assistant Superintendent to the
16 Maintenance Man.

17 Q Do you know whether he is still living?

18 A No, he is dead.

19 MR. PLANT: No further questions.

20 MR. ROCHE: General Counsel has no questions.

21 CROSS-EXAMINATION

22 Q (By Mr. Leff) Mr. Shockey, did you testify in your
23 direct testimony that the car you were driving in was
24 traveling 10 miles an hour when it crossed the Hollis inter-
25 section and then slowed down?

1 A That's right.

2 Q Mr. Shockey, do you remember testifying twice before
3 this in connection with this accident, once at a case at
4 trial -- well, both trials were in Alameda County, and one
5 was in 1959 and one was in 1961, do you remember that?

6 A Presently I don't remember one time that I testified.

7 Q Yes. Well, Mr. Shockey, I show you part of the
8 transcript that was introduced by Mr. Plant in Respondent's
9 Exhibit No. 12, Page 77, and I ask you to read Lines 2 to
10 6, please.

11 A Yes.

12 Q Now, Mr. Shockey, at this earlier trial that you were
13 at, were you asked the question:

14 "Question: They all started from 64th and San Pablo,
15 is that right?

16 "Answer: That is right.

17 "Question: How did they proceed down the block?

18 "Answer: Well, one behind the other, traveling about
19 20 miles an hour, probably 30 or 40 feet apart."

20 Do you remember whether that refreshes your memory as
21 to the testimony you gave?

22 A You said twice. Now, I can remember only one time I
23 was testifying.

24 Q Well, this is the time you remember testifying -- do
25 you remember testifying in the court in 1959 shortly after

1 these incidents happened?

2 A That was in Oakland?

3 Q Yes.

4 A Yes.

5 Q I read to you some testimony that was taken from you
6 by the Reporter in that proceeding. Did you read the testimony
7 I pointed out to you?

8 A Yes.

9 Q And in that it was reported that the cars were going
10 about 20 miles an hour.

11 MR. PLANT: Just a minute. They were going about 20
12 miles an hour down the block from 64th and San Pablo.

13 MR. LEFF: That isn't what it says.

14 MR. PLANT: It is, too.

15 "Question: They all started from 64th and San Pablo,
16 is that right?

17 "Answer: That is right.

18 "Question: How did they proceed down the block?

19 "Answer: Well, one behind the other, traveling about
20 20 miles an hour."

21 San Pablo is quite a distance from Hollis.

22 Q (By Mr. Leff) Is it your testimony that you were first
23 going 20 miles an hour and then the car slowed down at Hollis
24 to about 10 miles an hour?

25 A That's correct.

1 Q Do you remember a second time that you testified on
2 October 24th, 1961, in a second trial in which there was a
3 damage action and you were called by Mr. Hanger?

4 A Well --

5 MR. LEFF: Marion, would you stipulate that this is the
6 transcript of the second case? I so represent.

7 MR. PLANT: You state that it was?

8 MR. LEFF: Yes.

9 MR. PLANT: I will accept that statement.

10 MR. LEFF: Very well.

11 Q (By Mr. Leff) Do you recall that there was a second
12 trial in 1961 that you testified and Mr. Hanger, the gentleman
13 sitting in the back there, was the one that questioned you?

14 A Was that in Oakland or Frisco?

15 Q That was in Oakland also?

16 A I can't at this moment remember.

17 Q Well, Mr. Shockey, I will show you a transcript of
18 the testimony that you gave on October 24th, 1961, in the
19 Alameda Court, and I am reading now from Page 488, and I
20 ask you if you would read from Line 2 to Line 9, please.

21 A Yes.

22 Q Now, do you remember that the question was asked by
23 Mr. Hanger:

24 "Question: Incidentally, as you proceeded down 64th,
25 Mr. Shockey, approximately what rate of speed were you

1 traveling?" And the answer given was:

2 "Answer: Approximately 20 or 25 miles an hour.

3 "Question: And were you able to maintain that speed
4 all the way down at the point where you have shown us there
5 as LS-1?

6 "Answer: Yes.

7 "Question: Did you have any steps in between?

8 "Answer: No, No."

9 MR. PLANT: Steps in between?

10 MR. LEFF: Excuse me. Stops in between. And the
11 answer is:

12 "Answer: No, no."

13 Your Honor, in order to establish LS-1, I will ask the
14 witness to read the next colloquy because that establishes
15 where LS-1 was.

16 Q (By Mr. Leff) Read from Line 10 to Line 15, please.

17 A "All right." --

18 Q Read it to yourself, please.

19 A Yes.

20 Q And you were asked the question:

21 "All right, now what happened when you reached the point
22 LS-1, Mr. Shockey?

23 "Answer: Well, there was a car ahead of us that swerved
24 to the right. There was a pickup truck that pulled out from
25 the curb and missed the first car, and just then there was a

1 piece of concrete that came through the window."

2 Do you remember those questions and those answers?

3 A I do.

4 Q Do you want to now modify your testimony that you were
5 traveling at 20 or 25 miles an hour?

6 A We started out at that speed. We were -- when you go
7 out on a city block, you don't keep the same 20 to 25 miles
8 an hour, you slow down according to the traffic, according
9 to the people.

10 Q This testimony says you maintained that speed right
11 down to the point where this car swerved and the truck came
12 out.

13 MR. PLANT: That is not proper. The witness testified
14 that he gave that testimony.

15 MR. LEFF: I think that the record will speak for
16 itself on that point.

17 Q (By Mr. Leff) Did you testify in your direct examination
18 in response to your direct examination, Mr. Shockey, that
19 at the moment that this pickup truck -- the car you were in,
20 hit the pickup truck -- you had ducked from something that
21 was thrown in the window?

22 MR. PLANT: I object, Your Honor, to that as being
23 improper questioning. The record will show what he said, and
24 if counsel wants to ask him what happened, he is free to do
25 so.

1 He asked the witness to try to remember what he said
2 in response to questioning on direct examination, and I don't
3 think it is proper.

4 TRIAL EXAMINER: Overruled.

5 Q (By Mr. Leff) Could you answer the question, please?

6 TRIAL EXAMINER: Do you understand the question?

7 THE WITNESS: No. Will you repeat it, please?

8 Q (By Mr. Leff) Did you testify in your direct examination
9 that at the moment that your car hit this pickup truck you had
10 ducked from something thrown in the window?

11 A Well, the car didn't hit the pickup truck, the pickup
12 truck hit the car.

13 Q When the two cars collided --

14 A Just before that happened, a guy on the street threw the
15 concrete and threw it in the window, and I ducked, just like
16 that, and when I was straightening up, the car and pickup
17 truck came together.

18 Q Now, at the time that these cars came together, you
19 don't know if Arca's truck was moving, do you?

20 A It must have been.

21 Q Do you know?

22 A Yes, it was moving.

23 Q Mr. Shockey, do you remember back in January of 1961,
24 you went to a lawyer's office in Oakland, California, and
25 your deposition was taken by a couple of lawyers in a case you

1 had against the Union for damages?

2 A Yes.

3 Q And I ask you to read on page 25 of that deposition,
4 Line 24 up to the top of Page 26, Line 6, please.

5 A Yes.

6 Q And I ask you if the following questions were asked and
7 you gave the following answers:

8 "Question: So, therefore, you didn't see anybody?

9 "Answer: That is right.

10 "Question: Now, I would like to have you clarify this:

11 "Mr. Rankin asked you a few moments ago whether you saw
12 Mr. Arca's car moving, and you indicated it must have.

13 "Did you, as a matter of fact, see the car moving or
14 were you ducking just as the incident occurred?

15 "Answer: It is hard for me to say one way or the other
16 to be truthful."

17 Were those the questions asked and were those the
18 answers you gave?

19 A I can't remember that deposition.

20 MR. LEFF: Well, this is a deposition taken in that
21 lawsuit, Your Honor, and I shall be very happy to supply
22 counsel with a copy of it, if he doesn't have it.

23 MR. PLANT: May I see it, please?

24 MR. LEFF: Yes.

25 Q (By Mr. Leff) Mr. Shockey, who made the arrangements

1 that you were going to meet at 64th and San Pablo on that
2 morning?

3 A Our Business Representative.

4 Q Who is that?

5 A A man named Ray Green.

6 Q And he was a Business Representative of what Union?

7 A Millwrights Local 102. *I just*

8 Q And were all the people that gathered there at 64th and
9 San Pablo members of your Union?

10 A As far as I know, all of them went into the plant that
11 were members of the Union.

12 Q Members of your Union?

13 A Yes.

14 Q And was Mr. Green the one who arranged that everyone meet
15 there?

16 A Yes.

17 Q And did he arrange whose cars you would go in?

18 A No.

19 Q You arranged that among yourselves?

20 A Yes.

21 Q You made up the carloads at 64th and San Pablo?

22 A Yes.

23 Q Who decided that you come in a caravan fashion?

24 A We were told to be there at a certain time and we were
25 all supposed to be at 64th and San Pablo, and so when we all

1 got there, we just got in the cars and we took off. You can't
2 drive bumper to bumper any place, and so that is the way we
3 traveled.

4 Q Who was directing the sequence of the cars, or how they
5 would be arranged?

6 A Nobody, sir. Just as they got loaded they got in and
7 took off, wherever they happened to be parked.

8 Q As far as the arrangement of meeting on that corner,
9 that was made by your Business Agent of the Union?

10 A Yes, that's right.

11 Q Did you have any discussion with him as to why he
12 had that arrangement?

13 A No, because men, all the men, lived in all directions,
14 and that was the central point to meet to go in.

15 MR. LEFF: I see. I have no further questions, Your
16 Honor.

17 Just one more point.

18 Q (By Mr. Leff) Do you recall, Mr. Shockey, if your car
19 had stopped or was it in motion at the time that the pickup
20 truck and your car came down?

21 A I know he slammed on the brakes just like that when the
22 hit, and I am positive that it was almost a dead standstill
23 when the impact came.

24 Q It may have been moving a bit?

25 A Yes.

1 MR. LEFF: No further questions.

2 MR. PLANT: Do you have any questions, Mr. Roche?

3 MR. ROCHE: No questions.

4 MR. PLANT: No further questions.

5 TRIAL EXAMINER: You are excused, sir. Thank you.

6 (Witness excused)

7 MR. PLANT: I call Mr. Parker.

8 TRIAL EXAMINER: Come forward, sir.

9 Whereupon,

10 JAMES KERMIT PARKER

11 was called as a witness by and on behalf of the Respondent,
12 and, having been first duly sworn, was examined and testified
13 as follows:

14 DIRECT EXAMINATION

15 Q (By Mr. Plant) State your name, please.

16 A James Kermit Parker.

17 Q Your address?

18 A I live at 61 Park Way, Piedmont, California.

19 Q What is your occupation, Mr. Parker?

20 A I am an attorney.

21 Q Are you a member of the California Bar?

22 A Yes, I am, and I have been since December of 1956.

23 Q What is your association, if any, at the present time?

24 A I work for the Kaiser Industries Corporation in Oakland,
25 California.

1 Q Does your work take you away from Oakland quite a bit?

2 A Frequently, yes, sir.

3 Q Far away?

4 A Well, lately my travels usually take me to Venezuela,
5 and on occasion I go to points closer, such as New York
6 and Dallas, but generally Venezuela.

7 Q Now, do you remember after your admission to the
8 California Bar, did you practice by yourself or were you
9 associated with others?

10 A No, I was employed by the firm of Brobeck, Phleger &
11 Harrison, from actually before my admission to the Bar, and
12 starting in June of 1956 through January of 1961, and beginning
13 in February is when I went with the Kaiser Company. At that
14 time I was employed by the Henry J. Kaiser Company, which
15 was merged into Kaiser Industries Corporation.

16 Q That was in '61 that you left Brobeck's and went with
17 Kaiser?

18 A Yes.

19 Q So you were employed at Brobeck's as an attorney in
20 August of 1959?

21 A Yes, sir.

22 Q Now, did you, on August 19, 1959, go to Emeryville?

23 A Yes, sir.

24 Q Your purpose being to go where in Emeryville?

25 A To go to the Pabco Plant, what we called the Pabco

1 Plant. It was at the end of 64th Street in Emeryville.

2 Q Is the plant operated by the Fibreboard Company?

3 A Yes, sir, although it wasn't really in operation at the
4 time.

5 Q Was there anyone with you?

6 A Yes, Mr. Hanger was with me, Charles Hanger.

7 Q Who is Mr. Hanger?

8 A Mr. Hanger was another attorney. This was his first day
9 with -- as an employee of Brobeck, Phleger & Harrison. He had
10 formerly been employed in another law firm in the same
11 building.

3 12 Q Had either of you been over to the old Pabco Plant
13 before?

14 A I never had, and I don't think Chuck had either, because
15 neither one of us knew the way. Neither, unfortunately, did
16 the taxi driver know the way.

17 Q When you finally got out of the taxi, how did you
18 approach the plant?

19 A Well, we got out of the taxi on what was the east side
20 of the railroad track, but south of 62nd Street, and we walked
21 generally north to some little street, the name of which I
22 don't recall, that came into 62nd Street, and then we went
23 a little bit westerly to get down to Overland, and then up
24 Overland to the corner of 64th and Overland.

25 Q That is, by "up Overland," you mean --

1 A -- northerly on Overland.

2 Q Northerly on Overland?

3 A Yes.

4 Q Now, as you approached the intersection of Overland
5 and Hollis Streets, would you state what you observed?

6 A The intersection was Overland and 64th.

7 Q Excuse me. Overland and 64th.

8 A Right.

9 On Overland, just near the intersection was parked a
10 police car. On the northerly side of 64th Street, I would say
11 just about where Overland came into 64th, were a group of
12 people.

13 On 64th Street -- or at least the extension of 64th
14 Street, was about where the railroad tracks were crossing
15 and there were a couple of men walking back and forth, and
16 on, I'd say, on the Overland side of the railroad tracks, but
17 in the middle of 64th Street was a sign. Those were the
18 primary things.

19 Q I will show you a photograph -- pardon me, counsel.
20 You can see this.

21 Q (By Mr. Plant) I'll show you a photograph which has
22 been marked in evidence in other cases and which I will
23 ask be marked Respondent's Exhibit No. 16 for identification,
24 please.

25 TRIAL EXAMINER: So marked.

(The document above referred to was marked Respondent's Exhibit No. 16 for identification.)

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Q (By Mr. Plant) Does that photograph show the sign to which you have just referred?

A Yes. Right in the middle of 64th.

MR. PLANT: I will offer this photograph into evidence, Your Honor, as Respondent's Exhibit No. 16.

TRIAL EXAMINER: Any objection?

MR. ROCHE: No objection.

MR. LEFF: No objection.

TRIAL EXAMINER: Very well. Respondent's Exhibit No. 16 will be received into evidence.

(The document above referred to, heretofore marked Respondent's Exhibit No. 16, was received in evidence.)

MR. PLANT: I call your attention, Your Honor, to the fact that the sign bears the legend in large letters, "Locked Out."

Q (By Mr. Plant) The photograph doesn't show, Mr. Parker, -- it isn't large enough to show if there was anything printed below the legend, "Locked Out." Was there?

A Yes, sir, I am not positive of but what it was not put on twice, but there was in smaller printed words, "East Bay Union of Machinists, Local 1304."

Q How were you dressed that day?

1 A I had on a brown business suit, tie, regular business
2 shoes, glasses, no hat.

3 Q Were you carrying anything?

4 A Yes, sir, I was carrying a portfolio, a reddish-colored
5 portfolio, rather like that. ✓

6 MR. PLANT: I will ask that this portfolio be marked
7 for identification as Respondent's Exhibit No. 17, Mr. Trial
8 Examiner?

9 MR. LEFF: Is that an empty portfolio, Mr. Plant?

10 MR. PLANT: Yes.

11 (The document above referred to
12 was marked Respondent's Exhibit
No. 17 for identification.)

13 Q (By Mr. Plant) Was the portfolio which you were
14 carrying the one which has been marked Respondent's Exhibit
15 No. 17?

16 A Yes, it was like this, except when I was carrying it,
17 it was not empty, it had a couple of writing tablets and
18 miscellaneous material in it, and this was expandable.

19 I would say it was slightly fuller in appearance than
20 this one is because of the presence of material inside.

21 MR. PLANT: Now, I will offer Respondent's Exhibit No.
22 17 for identification into evidence as Respondent's Exhibit
23 No. 17.

24 MR. ROCHE: I object. In order not to clutter up an
25 already burdensome record, I would be willing to stipulate

1 that Mr. Parker was carrying a Manila folder of legal size
2 and of expansible construction, such as is used by lawyers
3 throughout the United States and throughout the world and
4 that he was carrying that at that time.

5 MR. PLANT: Which carries files and papers and so forth?

6 MR. ROCHE: Correct.

7 MR. PLANT: With that stipulation, I think that is
8 accurate enough.

9 MR. LEFF: I'll join in that stipulation.

10 TRIAL EXAMINER: Very well. Let the record show that
11 Respondent's Exhibit No. 17 for identification has been
12 withdrawn.

13 (The document above referred to
14 heretofore marked Respondent's
Exhibit No. 17, was withdrawn.)

15 TRIAL EXAMINER: Off the record.

16 (Discussion off the record.)

17 TRIAL EXAMINER: On the record.

18 Q (By Mr. Plant) Where were you carrying that portfolio?

19 A I was carrying it under my right arm, not by my right
20 hand separately, but sort of like this.

21 Q Just under your arm?

22 A Just under my right arm.

23 Q Did Mr. Hanger have anything with him?

24 A Yes, Mr. Hanger was carrying a briefcase. He had a
25 regular leather briefcase, like lawyers carry when they are

1 not carrying an expansible portfolio.

2 Q Now, as the two of you approached the intersection of
3 64th and Overland, were you accosted by anyone?

4 A No, not as we approached it.

5 As we came up to the intersection of 64th and Overland,
6 we then turned in, that is, we were going northerly and we
7 turned westerly toward San Francisco or towards the Bay almost
8 immediately. And when we -- we didn't run into anybody or
9 were accosted until after we turned that corner and started
10 into the plant.

11 Q Were there many men standing around in that area?

12 A No, not at that moment. When we turned into the plant
13 the only people that were in the street that I saw were two.
14 There were quite a few people over to the northerly side of
15 64th and about where the extension of Overland Street would
16 be if it ran through.

17 Q When you reached that point, were you accosted by
18 anyone?

19 A Yes, the two men in the street came over and I was
20 leading between Chuck and myself, I was walking a little bit
21 forward of him, and this fellow whom I later identified as
22 the man was pointed out to be Mr. Lincoln Beck. He came
23 up to the front of me and put his hand on my chest and
24 said, "Where do you think you are going?"

25 Q When he put his hand on your chest, did you stop?

1 A Yes, so did he.

2 Q When he asked you this question, what did you say?

3 A I said, "Take your hand off my chest, I have business in
4 the Pabco Plant." ✓

5 Q Continue. Tell me everything that was said.

6 A I said that, and he didn't take his hand off my chest
7 and I didn't push and he didn't push, and we sort of stood
8 there. And I told him once again, I said, "I got business in
9 the plant, and take your hand off my chest." ✓

10 And about this time -- I can't remember whether it was
11 before or after the second time I said that -- he gave what
12 I would describe as a head signal to this -- or at least
13 toward the direction of this group of men that were over on
14 the side of 64th Street, and they came over and surrounded us. ✓

15 There were quite a few men there.

16 And about this time, having asked him a couple of times
17 to take his hand off of my chest, I asked him what his name
18 was. I got no response, and I asked it again, "What is your
19 name?" I got no response again, and about this time, after
20 I asked him a couple of times, a man who from my standpoint
21 was on my left, or from the other direction was on Mr. Beck's
22 right, hit me once in the stomach and then once in the ear. ✓

23 This man was later identified to me as Richard Groulx,
24 G-r-o-u-l-x. I saw him several times later. ✓

25 Q When Mr. Groulx hit you, where was Mr. Hanger?

1 A Mr. Hanger was a little bit behind me, but as Mr.
2 Groulx hit me, I sort of stepped back and Mr. Hanger went by
3 me and grabbed Mr. Groulx. So our positions got reversed
4 and he, Mr. Hanger, when he stepped forward, grabbed Mr.
5 Groulx in a big bear hug.

6 Q From the rear or from the front?

7 A Well, Mr. Hanger was sort of from the side more than
8 anything. Mr. Hanger's body was primarily on Mr. Groulx's
9 right side with his head over sort of Groulx's shoulder.

10 Q What did you observe then?

11 A Then Mr. Arca hit Mr. Hanger twice.

12 Q Where did he hit him, could you tell?

13 A Well, yes. He hit him around the head area, more
14 precisely, he hit him once in the mouth and the other one was
15 in about the region of the mouth, too, but both of them
16 were in that area. I know one of them was in the mouth because
17 I saw Mr. Hanger's teeth afterward.

18 Q When Mr. Arca hit Mr. Hanger, where was Arca standing
19 with reference to Hanger?

20 A Mr. Hanger's viewpoint, from Mr. Hanger's viewpoint, he
21 was sort of bent over, holding -- with his head sort of over
22 the shoulder of Mr. Groulx with his hands around him, and Mr.
23 Arca was swinging from a point that was sort of slightly left
24 from Mr. Hanger's standpoint of straight ahead. This is the
25 general relationship.

1 Q What occurred then?

2 A After Mr. Arca hit Mr. Hanger a couple of times, then
3 two policemen darted by and one of them grabbed Arca and one
4 of them grabbed Groulx, and they hustled them over to the
5 police car, and we followed.

6 They put Mr. Groulx and Mr. Arca in the police car and
7 the policemen said, "Stay here," and asked us for identifica-
8 tions. We identified ourselves, that we were attorneys.
9 I showed him my membership to the State Bar card.

10 They said, "Wait here." We waited five minutes anyway,
11 or some space of time, and a second police car came and they
12 asked us to get in that police car, and both police cars went
13 over to the Emeryville Police Station.

14 Q What occurred there?

15 A They asked us to give a statement, which we did. ✓

16 After giving a statement, I just can't remember whether
17 we waited to have it typed up or not. However, they at that
18 point said, "Where do you want to go?" We said, "Over to the
19 Pabco Plant."

20 Then we went into the police car again and went back
21 over to the Pabco Plant.

22 Q You finally got there?

23 A Yes, slightly delayed.

24 Q When Mr. Beck placed his hand against your chest, I
25 think you testified that you stopped. Did you endeavor to push

1 forward at any time while he had his hand on your chest?

2 A No.

3 Q Did you call him or anyone else there any names of any
4 sort?

5 A No, sir.

6 Q Was your entire conversation with him substantially as
7 you have related here?

8 A Yes.

9 Q When Mr. Groulx intervened, did you put your hand on
10 Mr. Groulx?

11 A No.

12 Q Did you touch him?

13 A Yes.

14 Q You touched his fists?

15 A Yes, I touched his fists.

16 Q Other than his fists, did you touch him?

17 A No.

18 Q You say he hit you twice?

19 A Yes. Once in the stomach and once in this left ear
20 up back, at least a primary sore spot came where the glasses
21 sort of come over the upper part of the ear.

22 Q Now, did you strike anyone during the course of that
23 affair?

24 A No, I struck no one.

25 Q Did you lay your hands on anyone?

1 A No, not on anyone.

2 Q When Mr. Hanger stepped forward and seized Mr. Groulx,
3 did Mr. Hanger strike Mr. Groulx?

4 A No, he just wrapped his arms around him, pinning Mr.
5 Groulx's arms to his sides so he couldn't hit me any more.
6 It was just one big bear hug is all he did.

7 Q Was it while he was in that position Mr. Arca struck
8 him?

9 A Yes, that's right.

10 Q You saw Mr. Arca strike him?

11 A Yes, sir.

12 MR. PLANT: You may cross-examine.

13 CROSS-EXAMINATION

14 Q (By Mr. Roche) Had you ever seen Mr. Arca at any time
15 before that date?

16 A No, not to my knowledge.

17 Q You didn't know who he was at the time of this incident,
18 is that right?

19 A No.

20 Q You learned who he was when you went to the Police
21 Station?

22 A Yes.

23 Q Now, in your direct testimony you mentioned a head
24 signal. Is that right?

25 A Yes.

1 Q And that you say Mr. Beck made a head signal?

2 A Yes, sir.

3 Q I wonder if you would demonstrate for His Honor what
4 sort of a signal that was, please?

5 A Just a simple head movement like that.

6 Q You were hit twice by Mr. Groulx?

7 A Yes, sir.

8 Q And you were hit once in the abdomen and once behind
9 the left ear?

10 A Yes, it was on the left ear at sort of the upper reaches
11 right.

12 Q And did either one of these blows draw any blood?

13 A No.

14 Q Did either of these blows result in a bruise?

15 A Well, yes, nothing greatly serious, though. My left
16 ear, I could feel for a couple or three weeks as it just
17 gradually went away. The stomach was sort of a thing in which
18 I couldn't feel more than the next couple of days.

19 Q You felt some discomfort in the stomach area for a
20 couple of days?

21 A I wouldn't put it that strongly. It was just an
22 ordinary blow. It wasn't anything to get excited about. It
23 was just an ordinary blow in the stomach.

24 Q I take it you are familiar with athletics and you know
25 the effects of a blow to the solar plexus?

1 A This wasn't quite at the solar plexus.

2 Q Was it lower?

3 A It was more in this area. It was down where the
4 muscles are fairly firm.

5 Q It didn't knock the wind out of you?

6 A No.

7 Q It didn't knock you down?

8 A No, I sort of went back. My glasses dropped about
9 halfway down my nose. I don't know whether that was from
10 surprise or jerking back or what.

11 Q So in going backwards, you were more or less riding
12 with the punch, as they say, instead of going back from the
13 force of the blow, isn't that what you said, what you just
14 said?

15 A Not quite. I mean, I think I would have gone back if
16 I had seen the punch coming. That first punch in the stomach,
17 I didn't see in time to do anything about it. The question
18 in my mind was whether I got knocked back or whether I was
19 naturally retreating.

20 Q Your glasses were not broken?

21 A They were knocked off halfmast.

22 MR. ROCHE: Let the record show that the witness demon-
23 strated that his glasses were moved down toward the point of
24 his nose.

25 Q (By Mr. Roche) Is that right?

1 A Yes.

2 Q Now, as a result of these blows that you took from Mr.
3 Arca, did you see a doctor or seek any other medical attention?

4 A No.

5 Q You have had no permanent effects from these blows?

6 A No, sir.

7 Q I take it you were in good athletic condition at that
8 time?

9 A Reasonable for an attorney.

10 Q I mean you weren't an athlete in college, or were you?

11 A Not a particularly good one, but yes.

12 Q You engaged in several sports in college?

13 A Yes.

14 Q Approximately how much did you weigh at the time of
15 this encounter?

16 A I think it must have been about 185 pounds.

17 Q How tall are you?

18 A 6-1-1/2 or 6-1-3/4.

19 Q How tall would you judge that Mr. Groulx was -- or is?

20 A I am not too sure on that. I would say maybe 5 feet 8
21 or 5 feet 9.

22 Q Approximately how heavy?

23 A I would say Mr. Groulx was maybe 155 pounds, maybe 160,
24 in that range.

25 Q Now, when you were struck, you did not drop your

1 Manila folder, is that right?

2 A That is right. I did not.

3 Q Now, if I understand your testimony on direct, you saw
4 Mr. Arca hit Mr. Hanger twice, is that correct?

5 A Right.

6 Q Were these blows done with the fist?

7 A Yes.

8 Q And with the right fist or the left fist or both?

9 A I think it was one of each. It was pretty fast. And I
10 remember seeing two blows, and I just think it was one of
11 each, but I am not absolutely positive. I can't conceive
12 that he could have done it with two rights.

13 Q Tell us where the blows landed with respect to Mr.
14 Hanger's head?

15 A Mr. Hanger's tooth that was hurt was the eye tooth in
16 the area of the upper left tooth. They looked like they were
17 both around the same area, the blows, but I am not sure where
18 that other one landed, whether it was right on the same spot
19 or somewhere else.

20 Q You are assuming that from the damage to Mr. Hanger's
21 tooth that one blow landed in the upper left eye tooth?

22 A Yes, they were aimed in that general direction.

23 From my posture it was like being behind the recipient
24 of a blow, partially. I was looking over Mr. Hanger's
25 head, that I could see the blows come to his face, but I

1 couldn't see the exact position.

2 Q You didn't see the fist come in contact with the head?

3 A It is more like a prize fight when you are looking at the
4 fighter that is in front of you and facing away from you; you
5 are sort of looking over his shoulder. You see the punch come
6 on up and you see it take off and you see it hit, but you don't
7 see the blow touch the skin. I was on the wrong side to be
8 actually able to see it stop. I think maybe if I was on that
9 side I wouldn't have seen it because these things happen
10 just like that.

11 MR. PLANT: May the record show that when the witness
12 said, "These things happen just like that," he snapped his
13 fingers.

14 Q (By Mr. Roche) Now, at the time you had your conversation
15 with Lincoln Beck, were you aware of the fact that Mr. Beck
16 is hard of hearing?

17 A No, I had never seen Mr. Beck before either and I didn't
18 know it at the time, and I don't know particularly what his
19 hearing is now.

20 Q Did you notice when you were talking to Mr. Beck on that
21 occasion that he had a hearing aid in his ear?

22 A No, I did not.

23 Q Would you know Mr. Beck in the hearing room?

24 A Mr. Beck is there. When I said that I didn't know, that
25 was Mr. Beck is because I thought he had changed.

1 Q Were you positive that was Mr. Beck on August 19th,
2 1959, sir?

3 A Oh, yes, because there again Mr. Beck was available to
4 be seen occasionally as we went over there a few times, and
5 secondly, we have been at quite a few hearings.

6 Q At the incident on August 19th, 1959, was Mr. Beck
7 wearing a picket armband?

8 A Yes. I am pretty positive he was, though I cannot really
9 remember what it said or anything else about it, but I think
10 he was. I didn't particularly think about that at the time.

11 Q Did you identify any of the individuals who gathered
12 around you during that altercation?

13 A Other than the three I mentioned?

14 Q Yes.

15 A No. I am not positive I could. So many of these names
16 and faces were so familiar because I was working on this matter
17 at the time, but I couldn't tell you who was around in that
18 major circle, except the three people.

19 Q Did you know whether Mr. Beck was still present in the
20 group at the time that Mr. Groulx struck you?

21 A Yes.

22 Q Positive?

23 A Yes, positive.

24 Q Where was he standing with respect to you and Mr. Groulx?

25 A With respect to me, I was looking at Mr. Beck, so he

1 was straight ahead of me. And as I was looking at Mr. Beck,
2 Mr. Groulx was on my left.

3 Now, not all the way around, but left oblique. So Mr.
4 Groulx was standing as Mr. Beck was looking at me.

5 Mr. Beck's standpoint, from Mr. Beck's standpoint, Mr.
6 Groulx was on his right.

7 Q Did Mr. Groulx step in front of you before he struck
8 you?

9 A No. The first blow, as I said, was to the stomach
10 and --

11 Q Is it your testimony --

12 MR. PLANT: Let the witness finish, please.

13 MR. ROCHE: I'm sorry.

14 THE WITNESS: Yes, let me finish. The first blow was
15 to the stomach and I didn't really see it coming until about
16 the moment of impact.

17 Now, he had to necessarily move out and probably did to
18 throw his weight in as he hit me, which would mean a certain
19 amount of stepping and movement, but he didn't cross my line
20 of vision from Mr. Beck. He basically hit me from --

21 Q -- from the side?

22 A No, left oblique. It was not a hundred per cent from
23 the side.

24 Q And Mr. Beck stayed in the same position while this
25 was going on, or did he?

1 A As soon as I got hit in the stomach, I quit looking at
2 Mr. Beck.

3 Q How long did Mr. Beck -- was his hand on your chest
4 until you were struck in the abdomen?

5 A Well, I think it was, but it might have been that he
6 dropped it. I am just not positive on it. It might have
7 been that he dropped it about the time that he was -- that I
8 was asking what his name was. I remember that his hand was
9 there when there was any open space or I could have walked
10 into the plant.

11 By the time we were surrounded by a number of people it
12 was then when I was asking him what his name was and I am
13 not sure exactly when his hand came down. I think it stayed up
14 there pretty well until the time I got hit.

15 Q Tell His Honor how long a period of time transpired from
16 the time when Mr. Beck first put his hand on your chest until
17 you were struck by Mr. Groulx?

18 A I have been asked that question several times and I
19 have never had a good response for it, because it is hard for
20 me to measure.

21 Q Let me ask you this, which may be more simple.

22 How long a time transpired from the time that Mr. Beck
23 made the head signal until you were surrounded by the other
24 individuals?

25 A Well, it wasn't very long. I would say it was probably

1 somewhere in the neighborhood of between a quarter of a minute
2 to a half a minute.

3 Q All during this time Mr. Beck had his hand on your
4 chest?

5 A Yes, pretty well until the time I got hit he kept his
6 hand tere.

7 Q Did you make any attempt to move his hand from your
8 chest?

9 A No.

10 Q Other than the words you made no attempt to remove his
11 hand?

12 A That's right.

13 Q When your associate, Mr. Hanger, applied this bearhug
14 to Mr. Groulx, what happened to the briefcase that Mr.
15 Hanger was carrying, if you know?

16 A Well, I didn't see him drop it, but he didn't have it
17 in his hands when he went by me, and we did pick it up on the
18 ground, so it is obvious that he did let loose of it at the
19 time when the action started.

20 MR. ROCHE: No further questions.

21 Q (By Mr. Leff) Mr. Parker, at the time that you came up
22 to where the pickets were standing and you and Mr. Beck came
23 face to face, were you aware that an arrangement had previously
24 been made between a representative of the company and Mr.
25 Beck to identify people coming in as people having business at

1 the factory?

2 A No, I was never aware of that.

3 Q Well, when you were approaching Mr. Beck, did he put
4 his hand up before you came up to him, or did you and he come
5 face to face and did he then put his hand up?

6 A Well, I was starting to walk into the plant and he
7 walked a course that would put him between my path and the
8 plant. In other words, he walked into the road where I was
9 walking and then put his hand up.

10 I mean, he didn't walk ten feet with his hand up like
11 a policeman or anything; he put it up when he got in front of
12 me.

13 Q Would it be accurate to say in a sense you walked into
14 his hand?

15 A I wouldn't put it quite that way. He walked in front of
16 me, and when he got to an appropriate distance, he put his hand
17 up to stop me and I stopped.

18 Q When Mr. Beck asked you what your business was, did you
19 tell him that you were the company's attorney and that you
20 were coming into the plant in connection with your business in
21 the plant?

22 A He didn't ask me what my business was.

23 Q What did he ask you?

24 A He asked, "Where do you think you are going?"

25 Q Did you tell him?

1 A Yes. I said, "I have business in the Pabco Plant. Take
2 your hand off my chest."

3 Q Did you identify yourself in any way?

4 A No, I did not.

5 MR. LEFF: No further questions.

6 REDIRECT EXAMINATION

7 Q (By Mr. Plant) Mr. Parker, when Mr. Beck gave this head
8 signal, did you observe any movement among the people who
9 were standing over in the location you mentioned?

10 A Yes, that is sometime -- well, I mean these people just
11 came over around us.

12 Q Did that happen after Mr. Beck signaled with his head?

13 A Right.

14 Q How close in and around you were they?

15 A Well, Mr. Plant, I mean they were sort of about an ²⁰⁻
16 arm's length away. Mr. Beck was exactly an arm's length away
17 and Mr. Groulx ended up being about an arm's length away, and
18 the other people were about in that same distance, I mean
19 the ones that were closest.

20 There were ones that were further back.

21 MR. PLANT: Nothing further.

22 RECROSS EXAMINATION

23 Q (By Mr. Roche) These people that came over in response
24 to a head signal, approximately how many were there?

25 A I don't know. My guess was 20 to 30. There were quite

1 a few of them and I can't really be too sure. There were more
2 than you just automatically cancount.

3 Q Did they surround you or form a semicircle or what
4 sort of a disposition were they in?

5 A I was looking primarily at Mr. Beck, and at that time
6 there seemed to be people all around me. I don't know whether
7 it was a semicircle or whether they were in back of me or
8 what.

9 Q Did you hear any comments or statements from any people
10 in that group other than you have reported so far?

11 A You mean afterwards?

12 Q No, during the altercation.

13 A During the incident?

14 Q Yes.

15 A No, I can't recall any words being spoken there. I was
16 sort of focusing in on Mr. Beck and asking him what his name
17 was and if anybody else said anything, it just didn't make
18 any imprint on me.

19 MR. ROCHE: Nothing further.

20 Q (By Mr. Leff) I have one further question.

21 You mentioned that you saw this group standing across
22 the road. When you were watching Mr. Beck, you couldn't
23 see what they were doing, could you?

24 A No.

25 Q When he made that head signal, you weren't watching them

1 as they proceeded across the road?

2 A No, it was like thie peripheral vision. You see movement
3 from that area. You couldn't trace them across. You just
4 knew people were coming in from that direction.

5 Q In fact, it is your conclusion that they came over as
6 a result of a head signal, right?

7 A Sure. He gave a head signal.

8 Q Well, he gave a motion which you conclude as being a
9 head signal; right?

10 A That's right. Then people came.

11 Q And it is your conclusion that they came over as a
12 result of a head signal?

13 A Sure.

14 MR. LEFF: Nothing further.

15 MR. PLANT: Nothing further.

16 TRIAL EXAMINER: You are excused, sir. Thank you.

17 (Witness excused)

6 18 MR. PLANT: I call Mr. Hanger.

19 TRIAL EXAMINER: Come forward, please, Mr. Hanger.

20 Whereupon,

21 CHARLES E. HANGER

22 was called as a witness by and on behalf of the Respondent,
23 and, having been first duly sworn, was examined and testified
24 as follows:

25 DIRECT EXAMINATION

- 1 Q (By Mr. Plant) Would you state your name, please?
- 2 A Charles E. Hanger, H-a-n-g-e-r.
- 3 Q Where do you live?
- 4 A 34 Woodside Way, Ross, California.
- 5 Q What is your occupation?
- 6 A I am an attorney.
- 7 Q Where do you practice law?
- 8 A I practice law in San Francisco with the firm of Brobeck,
- 9 Phleger & Harrison.
- 10 Q How long have you been with Brobeck, Phleger & Harrison?
- 11 A Since August of 1959, August 19, 1959.
- 12 Q You had just come to work that day, that morning, had
- 13 you?
- 14 A That's correct.
- 15 Q When did you -- I take it you are a member of the
- 16 California Bar. When were you admitted?
- 17 A I was admitted in January of 1951.
- 18 Q Now, your first morning at work, did you and Mr. Parker
- 19 go over to Emeryville to go to the Pabco or Fibreboard Plant?
- 20 A Yes, we did.
- 21 Q And did you approach the plant along Overland?
- 22 A That's correct.
- 23 Q Walking north?
- 24 A Right.
- 25 Q Now, as you got to the intersection, or about the

1 intersection of Overland and 64th, will you state what you
2 observed?

3 A Well, when we had stopped in the taxi, we were able to
4 see the intersection of 64th and Overland and we could see
5 the two men walking back and forth on the railroad tracks,
6 and a group of other men there, and as we approached the
7 intersection, the scene remained relatively static.

8 There were two men walking back and forth across 64th
9 Street. There were a group of men on the north side of 64th
10 Street, and there was a police car stopped generally in the
11 intersection of 64th and Overland.

12 Q How were you dressed?

13 A A business suit and a tie. ✓

14 Q Were you carrying a briefcase? ✓

15 A Yes, I was.

16 Q A good-sized one?

17 A Approximately the size of the briefcase there by the
18 counsel table.

19 MR. PLANT: May the record show that the witness has
20 pointed to a briefcase which I have here, and which is as
21 about as heavy a briefcase as they come, at least it feels
22 that way to me.

23 MR. ROCHE: I would stipulate that that is about the
24 size of an average government briefcase, although it doesn't
25 appear to be of comparable quality.

1 Q (By Mr. Plant) Where were you carrying that?

2 A I don't recall, but I assume in my right hand. I
3 generally carry it in my right hand.

4 Q Were you and Mr. Parker walking abreast as you came
5 to the intersection or was one ahead of the other?

6 A I think generally we had been walking abreast.

7 I think as we made the turn, Mr. Parker was on the
8 inside and he turned out to be a step or two ahead of me.

9 Q Will you state what occurred that you observed from that
10 point on?

11 A Well, as we turned to enter the plant, one of the two
12 men who had been patrolling back and forth across the street,
13 positioned himself directly in front of Mr. Parker.

14 He raised his hand to Mr. Parker's chest, at which time
15 Mr. Parker stopped, and I stopped at Mr. Parker's side, and
16 slightly behind him.

17 A conversation ensued between this gentleman and Mr.
18 Parker which, to my present recollection, consisted largely
19 of the gentleman asking Mr. Parker where he thought he was
20 going, Mr. Parker then indicating that he had business in
21 the plant -- or that we did, I think he said, and that he
22 intended to go into the plant.

23 Within a matter of seconds thereafter, Mr. Beck gestured
24 with his head to the group that was gathered at the northern
25 part of the intersection, whereupon some, I believe about 15,

1 men surrounded us in a semicircle.

2 Q May I interrupt you for a moment? You say that this
3 gentleman had his hand against Mr. Parker's chest. Is that
4 Mr. Beck you are talking about?

5 A I didn't know Mr. Beck at the time, but the man was
6 later identified to me as Mr. Lincoln Beck, yes.

7 Q Continue, please.

8 A When this group gathered around, actually they made a
9 semicircle of approximately two to three persons deep. ✓

10 In the meantime, Mr. Parker continued to converse with
11 Mr. Beck. All of a sudden one of the men in the first row
12 of the semicircle stepped aside. Almost simultaneously Mr. ✓
13 Beck stepped the other way, and out of the second row of the
14 semicircle came Mr. Groulx who took about two or three steps
15 forward and then hit Mr. Parker with two blows that I recall. ✓

16 This all happened in a very precise manner and within
17 a matter of a couple of seconds, at which time I dropped my
18 briefcase and grabbed Mr. Groulx and attempted to pin him, ✓
19 and did pin his arms to his side.

20 Mr. Groulx is considerable shorter than I am, so that in
21 order to pin in his arms, it was necessary for me to put my
22 head on his shoulder, and shortly after I put my head on his
23 shoulder, I was hit with two blows to the head by someone who ✓
24 at that time I didn't see.

25 As soon as that happened, two policemen arrived on the

1 scene and picked up Mr. Groulx and the man later identified to
2 me as Mr. Arca.

3 Q Let's pause there and go back a bit.

4 Did you ever hear the entire conversation between Mr.
5 Parker and Mr. Beck?

6 A Yes, I did.

7 Q Did Mr. Parker at any time use any sort of obscene
8 language? ✓

9 A No, he did not.

10 Q Did he at any time call anybody any names?

11 A No, he didn't.

12 Q Did he at any time lay his hands on anybody?

13 A No, he did not.

14 Q Did you strike Mr. Groulx?

15 A I didn't strike Mr. Groulx, if by that do you mean I hit
16 him, but I simply grabbed him.

17 Q Did you at any time strike anybody?

18 A No, I did not.

19 MR. PLANT: You may cross-examine -- wait. Just one
20 other question.

21 Q (By Mr. Plant) When these two blows struck you, where
22 did they strike you?

23 A Both of them struck me on the head and one of them
24 struck me on the mouth, and frankly, at the moment, I don't ✓
25 know where the other one struck me.

1 Q Did you suffer any damage to your teeth?

2 A Yes, I suffered two broken teeth in the front. ✓

3 MR. PLANT: You may cross-examine.

4 CROSS-EXAMINATION

5 Q (By Mr. Roche) Now, you stated that when -- or
6 immediately after Parker was struck you grabbed Mr. Groulx
7 with your arms around him, is that correct?

8 A That's correct.

9 Q And from what position did you do this, in front of him,
10 or the side of him or in back.

11 A Well, my recollection is that I was pretty much to the
12 rear of Mr. Groulx, that I had my arms pinned around his arms
13 so that my front was almost directly against his back.

14 Q Do you know where the person was standing that struck
15 you in the head?

16 A I never did see the person that struck me, at any time.

17 Q I see. What happened after you were struck?

18 A Well --

19 Q Did you release Mr. Groulx?

20 A I released him at some time after I was struck. When
21 it was, I can't recall precisely.

22 Q Would you demonstrate for His Honor the head signal that
23 Mr. Beck gave?

24 A Well, Mr. Beck looked toward the group which would have
25 been assembled to the north, and went in a head gesture which

1 I think is a very common one, which indicated to me, "Come
2 here."

3 Q Did Mr. Beck have to turn his head in order to look at
4 the group?

5 A Yes, he did.

6 Q Which direction was the group from Mr. Beck?

7 A Well, the group was north of Mr. Beck primarily, and
8 perhaps a little bit to the east of Mr. Beck.

9 Q I take it, since you and Mr. Parker had made the turn
10 as if to enter the gate that you were facing generally west,
11 is that right?

12 A That's correct.

13 Q And if Mr. Beck was standing in front of Mr. Parker with
14 his hand on his chest, he would be facing generally east, is
15 that right?

16 A That's right.

17 Q And, therefore, he would not really have to turn his
18 head at all to look at the group, isn't that correct?

19 A No, the group was to the north. Mr. Beck was facing
20 east. The group may have been slightly east of him, but not
21 any significant amount.

22 Q After Mr. Beck made this head signal, did you observe
23 the group that he had signaled to?

24 A Yes. I saw them all come and position themselves in a
25 semicircle behind Mr. Beck and generally around us.

1 Q Did you watch them as they approached from where they
2 had been standing to where you were standing?

3 A I really can't recall if I watched their entire approach,
4 that is, the entire approach of eachman. I do recall being
5 conscious of the fact that they were in the process of
6 assembling around Mr. Beck and around us.

7 Q Are you completely certain that the group that Mr.
8 Beck looked toward was the group that came over and surrounded
9 you?

10 A Yes, I am certain of that.

11 MR. ROCHE: I have no further questions.

12 Q (By Mr. Leff) Mr. Hanger, you saw Mr. Parker push Beck's
13 hand away, didn't you?

14 A I don't recall seeing that at the present time.

15 Q Mr. Hanger, I show you a transcript with your testimony
16 of the damage action and ask you to read Page 1424, Lines 3
17 to 7, please?

18 A Yes.

19 Q Now, this was your testimony in October of 1961 and
20 were you asked the question,

21 "Question: You saw Mr. Parker place his hands on Mr.
22 Beck not once but a number of times, didn't you, Mr. Hanger?

23 "Answer: No, I didn't see Mr. Parker place his hands
24 on Mr. Beck. I think Mr. Parker did push Mr. Beck's hand
25 away from his chest. Whether that happened more than once, I

1 don't recall."

2 Do you recall those questions and answers?

3 A I do.

4 Q I take it that your recollection was better some six
5 years ago than it is now?

6 A There is no question about it.

7 Q But could you tell me, Mr. Hanger, your height?

8 A Six feet 6 inches.

9 Q I take it it was the same back in 1959?

10 A Yes, it was.

11 Q It is correct, isn't it, that you had no part in the
12 conversation at all that took place between Mr. Beck and
13 Mr. Parker?

14 A Well, if you mean did I say anything, I did not. Nor
15 was any comment addressed to me.

16 Q And it is correct, isn't it, that Mr. Parker did not
17 identify you and him to Mr. Beck?

18 A That's my recollection, he did not.

19 Q Now, when you had Mr. Groulx pinned, as you testified,
20 your head was over his left shoulder, wasn't it?

21 A Yes, I think that is correct.

22 Q Is that correct?

23 A Yes.

24 MR. LEFF: No further questions.

25 MR. PLANT: Have you anything further?

* * *

1 MR. ROCHE: The General Counsel would rather be right than
2 consistent. I can see the persuasiveness of Mr. Plant's
3 argument, and generally in legal proceedings, you start count-
4 ing the time the day after, or beginning with the day after.

5 So at this time, General Counsel will withdraw his
6 motion to amend the Specification, except with respect to the
7 average quarterly earnings for Mr. Novacek during the base
8 period.

9 TRIAL EXAMINER: Anything further?

10 MR. ROCHE: Was Mr. Leff's proposed stipulation accepted?

11 TRIAL EXAMINER: I understood Mr. Plant did accept it.

12 MR. PLANT: What was the stipulation -- yes.

13 TRIAL EXAMINER: The stipulation is noted and approved.
14 And your motion to amend is withdrawn with the exception of
15 Novacek.

16 All right. Call your witness, please.

17 MR. PLANT: I call Mr. Riesenbergs, please.

18 Whereupon,

19 WILLIAM P. RIESENBERG ✓
20 was called as a witness by and on behalf of the Respondent,
21 and, having been first duly sworn, was examined and testified
22 as follows:

23 DIRECT EXAMINATION

24 Q (By Mr. Plant) Mr. Riesenbergs, what is your occupation?

25 A Presently I am Plant Engineer for Fibreboard Paper ✓

1 Industries Products Plant, Wilmington.

2 Q Is that plant engineer or insulations plantengineer?

3 A I believe the correct title is plant engineer. There
4 is no insulations.

5 Q Where do you live?

6 A I live at 1379 Grizzly Peak Boulevard, Berkeley,
7 California.

8 Q How long have you been Plant Engineer over at
9 Emeryville?

10 A Since about 1961.

11 Q And prior to then you were what?

12 A I was a Project Engineer for a short time, and prior to
13 that a Maintenance Engineer in the Insulations Plant. ✓

14 Q How long have you been with Fibreboard?

15 A 13 years.

16 Q About when was it that you became Maintenance Engineer
17 for Insulations?

18 A November 4 -- November 8, 1954.

19 Q And has your work ever since that time been pretty
20 intimately involved with the insulations plant?

21 A Yes.

22 Q By the way, what do they make in the insulations plant?

23 A We make formal insulation material, calcium silica.

24 Q Industrial insulations?

25 A Yes.

X

1 Q Speak up, please.

2 A Yes.

3 Q Now, I want to direct your attention to the period
4 immediately prior to the time in 1959 when the maintenance
5 work at Emeryville was let to an independent contractor.

6 That is the period preceding July 31, 1959. ✓

7 Now, during that period, did you have any maintenance
8 personnel regularly assigned to the insulations plant?

9 A Yes, in essence they were regularly assigned to the
10 insulations plant.

11 Q What were the job classifications of those people?

12 A We had the floor machinists, one of whom was a working
13 foreman, a pipefitter, an electrician, and then we would
14 intermittently get help from the main shop which really con-
15 trolled the crew to the extent of possibly a half of a
16 machinist and another half of mixed trade, welder and that
17 type.

18 Q So that you had four machinists in the sense of people
19 who were represented by 1304? ✓

20 A Actually, assigned to the insulations plant.

21 Q And then you had a pipefitter regularly assigned to the
22 insulations plant? ✓

23 A Right.

24 Q He was not a 1304 man?

25 A Right.

1 Q And you had an electrician regularly assigned and he was
2 not a 1304 man?

3 A Correct.

4 Q And you used the equivalent of about a half day's time
5 each of a machinist dispatched from the main shop? ✓

6 A Right.

7 Q And of a welder-rigger dispatched from the main shop?

8 A Right. The welder-rigger was not 1304.

9 Q He was not 1304?

10 A No, he was not.

11 Q Now, that was for a normal operation of how many shifts
12 per day?

13 A As I recall, we were on, I believe it was, two shifts
14 five days, a two-shift five-day operation at that time. }

15 Q When you worked less than two shifts, was the crew
16 reduced any?

17 A Normally it would be, yes.

18 Q Now, on occasion, were there occasions when you called
19 upon the main shop for additional help other than that which
20 you have mentioned? X \

21 A Yes, very definitely.

22 Q And they might be one of any of the crafts that you
23 mentioned or more than one of some of the crafts?

24 A This is true, yes. ✓

25 Q Now, let me concentrate on the period after July 31, ✓

1 1959, up until September -- wait just a minute.

2 Let's concentrate on the period from beginning with
3 September, 1962, and ending in January of 1965, please.

4 A Yes.

5 Q Now, you have in mind, do you, that during that period,
6 late '62 to early '65, the work, the maintenance work in the
7 plant was being done by an independent contractor?

8 A That's right.

9 Q Now, did you, during that period, have anyone regularly
10 assigned to the insulations plant?

11 A Yes, in the sense that the same personnel the contractor
12 would assign to the plant. We didn't change people. So they
13 were assigned to the plant.

14 Q How many people did you have that would be of regularity?

15 A I have to tax my memory now. There were five millwrights
16 I believe, was the standard crew. Again, the pipefitter and
17 again the electrician.

18 Q Who did the rigging and welding?

19 A The millwrights did their own rigging and welding.

20 Q Now, let me see if I have that straight.

21 You have five men, five millwrights who did their own
22 rigging and welding and in addition you had an electrician
23 and a pipefitter?

24 A Right.

25 MR. PLANT: May I see Union's Exhibit No. 21, please?

1 Well, rather than digging for it, I have the copies of
2 yours which have been reproduced.

3 Q (By Mr. Plant) I am going to show you a document which
4 has been marked in this case as Union's Exhibit No. 21.

5 Now, I note that in the week ending, for example, on
6 January 20, 1964, the hours worked show for millwright foreman,
7 40 hours, and for the millwright workers, that is, other than
8 the foreman, 160 hours.

9 Now, that is the equivalent at the time of five men.
10 And I notice that shows that those same figures appear
11 generally throughout the exhibit.

12 I also note, however, that in early '64, for example,
13 the week ending January 13, you were up to 192 hours for
14 regular millwright workers.

15 And later in May you were up to -- March, rather -- you
16 were up to 191 hours, 194 hours, 200 hours, 192, 200, 195.

17 Could you tell me what the reason was why those extra
18 hours were in there during these periods?

19 A I can't be positive, but it is pretty clear what we were
20 doing there was getting extra people from the contractor to do
21 the jobs. This would be major repairs or capital jobs.

22 Q Did you do any capital jobs during the year 1964?

23 A Yes, we did.

24 Q And by capital jobs you mean jobs which would be jobs
25 which would be capitalized rather than treated as maintenance

1 and expense for income purposes?

2 A Exactly.

3 Q Were the capital jobs that you did in '64 extensive?

4 A I would say Yes.

5 Q And did they involve any welding, rigging, pipefitting?

6 A Both the repair jobs were done during that interval --
7 I am trusting my memory. The capital jobs involved all
8 trades, yes. ✓

9 Q Now, when you had one of these capital jobs that involved
10 pipefitting and the one pipefitter couldn't handle it all, did
11 the millwrights help him out in his pipefitting?

12 A In that interval, we used to bring in other pipefitters,
13 the contractor, the maintenance contractor would assign
14 additional pipefitters. ✓

15 Q But all the other work in these capital job projects
16 was done by the millwrights? ✓ //

17 A Not all of it. We would contract a lot of it. If any-
18 thing was done in the plant, it was essentially done by the
19 millwrights.

20 Q Right. That is what I am talking about.

21 Now, these millwrights were sent you from the main shop
22 as needed? ✓

23 A Basically, they were assigned from the main shop. Again,
24 we had the same basic people all of the time. \ \

25 Q I mean when you needed these additional people, they

1 would come from the main shop?

2 A Yes, come from the main shop.

3 MR. PLANT: I have no further questions.

4 TRIAL EXAMINER: We will take a short recess. You can
5 leave the witness stand, sir.

6 (Short recess.)

7 TRIAL EXAMINER: On the record.

8 (The witness resumed the stand.)

9 TRIAL EXAMINER: Mr. Roche, do you have any questions?

10 MR. ROCHE: No cross-examination by the General Counsel.

11 MR. LEFF: I have no cross-examination, Your Honor.

12 However, I would like to ask the witness what his name is.

13 CROSS-EXAMINATION

14 Q (By Mr. Leff) I don't have any cross-examination, but
15 how do you spell your last name, sir?

16 A R-i-e-s-e-n-b-e-r-g.

17 MR. LEFF: That is all.

18 MR. PLANT: I guess that lets you out, sir.

19 TRIAL EXAMINER: Thank you, sir. You are excused.

20 (Witness excused)

21 /

22 /

23

24

25

X

1 MR. PLANT: I call Mr. Maffey.

2 TRIAL EXAMINER: Come forward, sir.

3 Whereupon,

4 WILLIAM LUZON MAFFEY

5 was called as a witness by and on behalf of the Respondent,
6 and, having been first duly sworn, was examined and testified
7 as follows:

8 DIRECT EXAMINATION

9 Q (By Mr. Plant) State your full name, please?

10 A William Luzon Maffey, M-a-f-f-e-y, 246 Pickering Avenue,
11 Fremont, California.

12 Q You are employed by Fibreboard Corporation, are you?

13 A Yes.

14 Q Formerly Fibreboard Paper Products Corporation?

15 A Yes.

16 Q Formerly Fabc?o?

17 A Yes.

18 Q In what capacity are you presently employed?

19 A On a special project as Project Engineer for Central
20 Engineering Department.

21 Q How long have you been at Emeryville?

22 A August 6, 1933, roughly 24-1/2 years.

23 Q During the period from -- let me withdraw that.

24 In 1959, what was your job?

25 A I was the Plant Engineering for the Building Materials

1 for the Roofing Division.

2 Q As such, did you have control of the main shop? ✓

3 A Yes.

4 Q Truck shop? ✓

5 A Yes.

6 Q How long did you remain in that position?

7 A Until July of this year.

8 Q Now, during the period immediately prior to July 31,
9 1959, and I am going to direct my next few questions to that
10 period before the contractor came in, were 1304 people the
11 only maintenance employees in the plant. ✓

12 A No.

13 Q What other maintenance personnel were there?

14 A There were riggers, welders, pipefitters, electricians. ✓

15 Q Do you recall how many electricians there were? ✓

16 A I believe ten. ✓

17 Q How many pipefitters? ✓

18 A ~~At least seven,~~ maybe nine. ✓

19 Q And how many welders and riggers? ✓

20 A Five fitter-welders. ✓

21 Q What was that last?

22 A Including the pipefitter welders there were five fitters
23 and welders.

24 Q In addition to the pipefitters that you have mentioned?

25 A Yes.

3 1 Q Now, these were all represented by unions other than
2 1304?

3 A Yes.

4 Q Now, you said that there were seven, or perhaps nine
5 pipefitters. Would it refresh your recollection any if I
6 were to suggest to you that it was nine?

7 A Nine. Yes, as I recall it, it was nine that I investi-
8 gated.

9 Q You didn't check back on the records?

10 A No.

11 Q All of these people were terminated at midnight July 31,
12 1959, is that correct?

13 A Yes.

14 Q And thereafter was the work that they had performed
15 performed by employees of the contractor?

16 A Yes.

17 Q Now, returning to the Local 4 -- excuse me, Local 1304
18 people, the machinist people who were paid as machinists under
19 the collective bargaining contract, did all of those people,
20 in fact, work as machinists?

21 A About half of them were qualified machinists and the
22 others were mechanics.

23 Q Was that the way they worked? About half of them
24 actually worked as mechanics?

25 A Yes.

1 Q And the others did some work as machinists?

2 A Part of the time.

3 Q Explain what you mean by doing the work as machinists?

4 A The machinists who had the skills to operate the machine
5 tools were not always employed at the machine tools. They
6 had field work to do, too.

7 Q Perhaps you misunderstood.

8 What do you mean by working as a machinist?

9 A Well, operating machine tools and the work that related
10 to the layout and mathematics and so forth.

11 Q In other words, operating machine tools to shape metal,
12 is that it?

13 A Yes.

14 Q Now, you say about half of the men did that sort of
15 work at least part of the time?

16 A They were competent to do that sort of work, yes, sir.

17 Q Did all of the men who worked on occasion as machinists
18 spend all of their time as machinists?

19 A No, there was not that much machine shop, machine tool
20 work, so that they also had part of their duties in the
21 field working on machinery, dismantling and reassembling.

22 Q So the rest of the time they worked simply as mechanics,
23 is that right?

24 A Yes.

25 Q Doing the same kind of work as men to whom you referred

1 as mechanics?

2 A Yes.

3 MR. PLANT: I'll call the Trial Examiner's attention
4 to the fact that Appendix A to the Specification lists the
5 men as mechanics, machinists, and that although the collective
6 bargaining contract refers to all as machinists, in fact,
7 there were about half of them, as you will see from that
8 appendix, who worked simply as mechanics.

9 TRIAL EXAMINER: Is this something that could be
10 stipulated now that it has been brought to the attention of
11 the General Counsel?

12 MR. ROCHE: I don't think it was ever in dispute, but
13 if a stipulation is needed, I will stipulate that.

14 MR. PLANT: Well, it is alleged in the Complaint
15 Specification.

16 TRIAL EXAMINER: Is it going to be material insofar as
17 the computations of back pay?

18 MR. PLANT: It is material insofar as a proper wage rate
19 is, yes.

20 I'd be quite happy to propose a stipulation to the
21 effect that those people who are listed as mechanics in
22 Appendix A to the Specification did, in fact, work simply as
23 mechanics, is that acceptable?

24 MR. LEFF: Could the Reporter read back that proposed
25 stipulation?

* * *

X

1 was here, Your Honor.

2 Q (By Mr. Plant) Now, continuing --

3 TRIAL EXAMINER: I might suggest to obviate this that
4 Counsel could very well consult with one another to determine
5 whether or not there is going to be made such defense and if
6 they have the representation of counsel that there is not,
7 it might obviate this type of situation because an anticipatory
8 defense very often never eventuates.

9 MR. PLANT: Well, I was told by counsel that he would
10 make this defense, but whether he has changed his mind, I
11 don't know.

12 MR. LEFF: You are drawing a conclusion from a refusal
13 to enter into a stipulation, Mr. Plant.

14 MR. PLANT: Well, you don't intend to make that defense?

15 MR. LEFF: At this point, I will reserve my position.

16 MR. PLANT: That is about as firm an answer as I get on
17 this.

18 Q (By Mr. Plant) Now, turning your attention to July 31,
19 1959, do you recall how many men there were on the machinists'
20 roster, seniority roster?

21 A Yes, very well, 39. ✓

22 Q Now, were all of those men in active employment?

23 A No. We had run shorthanded for a while. There was
24 Arca who had been on union business. Jobe had been ill for a
25 while, quite a while. Holmes had been sick, and there were

1 four all together, Vandenbeck was working as a fireman.

2 Q You said you had run short-handed for a while. You mean
3 the period immediately before --

4 A That left 35 working as of the date which terminated
5 them. And previous to that there had been 33, so we filled in
6 several.

7 Q Now, was that force of 35 men adequate?

8 A Yes.

9 Q Now, turning your attention to the period from mid-
10 September, 1962, to mid-January, 1965. You will recall that
11 during that period the contractor was still in the plant, is
12 that correct?

13 A Right.

14 Q Do you have those dates in mind, mid-September, '62, to
15 mid-January, '65?

16 A Yes.

17 Q Well, no, wait now -- withdraw that. I want to go back
18 to the period immediately following --

19 A The contractor's take-over?

20 Q Yes. Immediately following July 31, 1959.

21 Now, what employees did the contractor have on the job
22 in the sense of job classifications, titles?

23 A Subsequent to the termination of 1304?

24 Q Yes, when the contractor --

25 A They had only millwrights -- well, no, one pipefitter and

1 one electrician and three trade unions involved.

2 Q Millwright, only one pipefitter, and some electricians,
3 is that it?

4 A Yes.

5 Q Did he employ any helpers?

6 A No, no helpers. Immediately after that, Mr. Plant,
7 there may have been more fitters.

8 Q More pipefitters?

9 A Yes. When you get up to '62 there was only one.

10 Q Now, referring you to the work of the maintenance
11 machinists in the paint plant, was there enough work in the
12 paint plant at that time to keep a man busy full time?

13 A Where are we now in time

14 Q July 31, 1959 -- or August 1, 1959.

15 A There hadn't been a full-time man in the paint plant
16 prior to that time, but since then there was no man assigned
17 there.

18 Q Just answer my question. Was there enough --

19 A There was a lot less than one man's time.

20 Q After the contractor took over, was anyone regularly
21 assigned to the paint plant?

22 A No.

23 Q How was the paint plant serviced?

24 A From the main shop.

25 Q Have you finished your answer?

19

1 A Yes.

2 Q Now, in the felt mill after the contractor took over,
3 was anyone regularly assigned to the felt mill?

4 A No.

5 Q How was it serviced?

6 A From the paint shop as needed.

7 Q Now, we come to the period beginning September, mid-
8 September, 1962, and ending in mid-January, 1965.

9 At that time the floor covering division, that is, the
10 linoleum and felt base plants, had been closed, had they not?

11 A Yes.

12 Q And the bulk of the roofing plant had been moved up to
13 Martinez?

14 A Yes.

15 Q What was left at Emeryville?

16 A The felt mill, the insulations plant, the granule
17 plant, No. 3 machine which makes mastipave, m-a-s-t-i-p-a-v-e,
18 a patented name for floor covering, and the truck shop.

19 Q How about the paint plant?

20 A And the paint plant.

21 Q Were those things that you mentioned all that were left
22 at Emeryville?

23 A Yes.

24 Q Were any of these facilities other than insulations and
25 the -- let me withdraw that.

1 Did any of these facilities other than insulations and
2 the truck shop have anyone regularly assigned to them? ✓

3 A No, they were handled from the main shop. ✓

4 Q How many men were employed in the truck shop? ✓

5 A It varied. It was always nearly one, unless he was ill,
6 and quite often, too.

7 Q What was the total number of millwrights that you had
8 in the plant during this period that I have mentioned? Was
9 it static, or did it vary somewhat? ✓

10 A It would vary with the capital work. ✓

11 Q What was the range?

12 A Oh, six to nine in the side I was involved with, is that
13 what you meant? The main shop? ✓

14 Q Well, the main shop including insulations? I am talking
15 about the entire plant.

16 A Yes.

17 Q That would include insulations?

18 A Yes.

19 Q What did it run, usually? You said a range from six
20 to nine?

21 A Oh, I would think seven or eight.

22 Q Now, let's straighten that out now.

23 You had normally five men. There were five men regularly
24 assigned to insulations? ✓

25 A Yes, and a pipefitter. ✓

21

1 Q And these six to nine were in addition to those assigned
2 to insulations?

3 A I was trying to think. That was my feeling, as I
4 recall, but there was --

5 Q And the seven or eight which you said would usually
6 be in addition to the five originally assigned?

7 A Insulations. The one on my side were six to nine.

8 Q "By my side," you mean a side other than insulations?

9 A Yes, other than insulations.

10 Q Now, during this period that I have mentioned, was
11 there -- how many pipefitters were there in the plant?

12 A One.

13 Q Now, this is the period from mid-September --

14 A One normally in routine maintenance work.

15 Q Yes. Where was he assigned?

16 A In insulations.

17 Q He worked regularly in insulations?

18 A Yes.

19 Q Did the millwrights do any pipefitting work?

20 A Yes, they did pipefitting work of a minor nature in
21 all the rest of the plant, and even in insulations when the
22 fitter was absent.

23 Q Who did the work which in years past had been done by
24 the welders and riggers?

25 A The millwrights of the contractor.

1 Q Is it a fact that during this period from mid-September,
2 1962 to mid-January, 1965, this force of millwrights did all
3 of the rigging, welding, pipefitting in the plant, except
4 for the pipefitting done by the man assigned to insulation?

5 A Yes, excepting when we might have a contractor in for
6 a special job. Now, another contractor now.

7 Q Let me ask you this: Can you tell us about how much time
8 in terms of the number of men involved, how many were required
9 to do the rigging, welding, and pipefitting that you have
10 mentioned as having been done by the millwrights?

11 That represented at the time about how many men?

12 A I would think two or three men.

13 Q In other words, between two or three men; is that it?

14 A Yes.

15 Q I am going to refer you again -- refer you, I don't
16 think I have referred it to you before -- to Union's Exhibit 21

17 Now, let's take the bottom of the first page as an
18 example.

19 I notice that this doesn't show any hours in the truck
20 shop, either by the foreman or by the millwright, except for
21 ten hours' overtime. Does that mean that there was no work
22 being -- straight time work being done in the truck shop, or
23 does it mean simply that the time was charged somewhere else?

24 A It was probably charged somewhere else.

25 So part of it -- or maybe someone was ill.

23

1 Q It would appear in the main plant, the figures, would it

2 A I think so.

3 Q Now, turning your attention -- or keep it on this back
4 pay period from mid-September, 1962, to mid-January, 1965,
5 if you will eliminate this pipefitting, welding and rigging
6 that was done, how much time would have been required -- or
7 how many men would have been required to do the work which
8 was being done by the millwrights?

9 A Millwrights?

10 Q Millwrights, yes?

11 A I would think two men at least.

12 Q No. You misunderstand me. How many men would have been
13 required to do the work which had been done in the past by
14 the 1304 machinists?

15 A Oh, I see. Yes. It would be two less men that we had
16 out of the six or nine that we used on that side.

17 Q Would you have required more than the total of seven
18 machinists in the main shop and truck shop combined?

19 A I believe not.

20 MR. PLANT: You may cross-examine.

21 CROSS-EXAMINATION

22 Q (By Mr. Leff) Mr. Maffey, I wonder if you -- let me ask
23 a question and let you explain in detail, if you would.

24 I am not clear on the operation of your maintenance
25 department. When you talk about a main shop from which people

1 went out into the field, do I take it, this is a machine shop?

2 A Where most of the machines are located.

3 Q In addition you had fitters' benches?

4 A There were benches there.

5 Q And a mechanic would have his bench there, is that it?

6 A Yes.

7 Q And the mechanics' benches were reasonably closely
8 adjacent to --

9 A All in the same area, yes, sir.

10 Q And, I take it that some of the mechanics who had
11 machine ability at times would go to a machine if they had a
12 simple part to make rather than take the time to find a
13 machinist to do it, is that so?

14 A Say that again?

15 Q I take it that in that operation a mechanic who was
16 working on a job, say, out in the field who came back in the
17 shop to work on a subassembly who had a part to be machined
18 and it was a simple job and a short job and there was a machine
19 available and he had the skill, I take it he would normally
20 go to a machine and do it, right?

21 A Yes, if he had the skill.

22 MR. PLANT: By "mechanic," are you referring to one of
23 the men listed as mechanics in Appendix A?

24 MR. LEFF: Yes.

25 THE WITNESS: He wouldn't have the skill, I don't think.

- 25 1 Q (By Mr. Leff) If he had the skill, would he have done it?
- 2 A I assume he would.
- 3 Q In fact, this would be something that the management
- 4 would approve of because it might save time?
- 5 A True.
- 6 Q And, in fact, you weren't in the shop all day, so this
- 7 may have been going on and you wouldn't know?
- 8 A Well, not if he hadn't the skill, I wouldn't expect it
- 9 to be happening.
- 10 Q But if he had the skill, it could well have happened,
- 11 isn't that so?
- 12 A No.
- 13 Q Did you have a job --
- 14 A I think I would have come upon it if I did. To find
- 15 somebody who was a mechanic working on the lathe, I would be
- 16 surprised, to say the least.
- 17 TRIAL EXAMINER: Let me ask him a question here.
- 18 MR. LEFF: Very well.
- 19 TRIAL EXAMINER: Which is considered to be the more
- 20 skilled job, a machinist or a mechanic?
- 21 THE WITNESS: A machinist calls for a higher talent
- 22 in training.
- 23 TRIAL EXAMINER: If a mechanic did a simple job, but
- 24 nevertheless it is a job under the jurisdiction of a machinist
- 25 let's put it that way, is there any problem of the shop

26

1 steward policing that.

2 THE WITNESS: No.

3 TRIAL EXAMINER: No question of that?

4 THE WITNESS: It is just a matter of whether he was fitted
5 to do it and he wouldn't tackle it unless he was.

6 TRIAL EXAMINER: Was there any understanding that the
7 trades were jealous of their prerogatives and they frowned
8 upon one craft doing another craft's job or apparently this--

9 MR. LEFF: They were both the same union and both
10 getting the same rate. ✓

11 THE WITNESS: That phase never became a problem because
12 they were all similar.

13 TRIAL EXAMINER: I thought possibly they were separate
14 unions.

15 MR. PLANT: No, these were all the men we were talking
16 about.

17 TRIAL EXAMINER: That accounts for it. If there were
18 two unions I imagine there would be some friction.

19 MR. LEFF: You could well imagine it.

20 TRIAL EXAMINER: Evidently counsel has such a profound
21 knowledge of this situation in the plant that they considered
22 that very minor.

23 MR. PLANT: Which I brought up because I thought it
24 was minor because no one ever mentioned it to me.

25 Q By Mr. Leff) Mr. Maffey, the paint shop had not had a

1 man assigned to it before July 31, '59, isn't that so?

2 A For a period, yes.

3 Q Dave Arca had not been assigned to the paint shop for
4 several months before that?

5 A Exclusively assigned, no.

6 Q So he had been moved back to the paint shop to the main
7 shop?

8 A Yes.

9 Q And when there was paint shop work to be done, he went
10 from the main shop --

11 A If he was around normally and he had the best knowledge
12 of the plant he would go -- yes.

13 Q In the paint shop, it's after July 31, 1959, was some
14 of the work that had been done by Local 1304 people done by
15 the production people?

16 A What period now?

17 Q After July 31, '59?

18 A Yes.

19 Q Could you describe what work that was that had been
20 done by the 1304 men that was done by the production people
21 after July 31, '59?

22 A No, I wasn't too familiar with the details of the jobs
23 up there, because it was an outlying plant. I think some
24 of the oiling was done by operating personnel.

25 Q That had been done by 1304 men?

X

1 I believe 1304 had handled it before or maybe they both
2 did.

3 Q And also, I take it, running maintenance and adjustments?

4 A Yes, if something became loose, they would tighten it.

5 Q Whereas previously 1304 men had done it?

6 A If the man was available, he would probably have done it.

7 Q In the felt mill after July 31, 1959, was there maintenance
8 work or work that had been done previously by 1304 men done by
9 other people?

10 A Yes.

11 Q And these were the millwrights under the Warehousemen's
12 contract, is that it?

13 A Local 6, right.

14 Q Could you describe what work that was?

15 A Well, they had always done the belts and some of the
16 oiling. They picked up the remainder of the oiling, I am
17 sure. There were some split jurisdictions during the 1304
18 period before the contract and arguments.

19 The threading rope for the big paper machine was taken
20 over entirely by them and --

21 MR. PLANT: Please finish your sentences because they
22 are not coming through rightly and they won't make sense.

23 THE WITNESS: This equipment called the Jordan was
24 refilled by the mixed crew of the millwrights and Local 6
25 millwrights, or either way. That is about it, I guess.

29 1 Q Isn't it true that after the wooden beaders were
2 eliminated in the felt mill, the millwrights, under the
3 Warehousemen's contract, took over practically all the work
4 that had been done by Local 1304 in the felt mill?

5 A Yes -- as far as volume is concerned?

6 Q Yes.

7 A As far as type, yes, but not as far as volume.

8 They had to have help from the millwright. They couldn't
9 handle machine tools either..

10 Q Could you give any kind of estimate as to the work that
11 had been done by 1304 men in the felt mill prior to July 31,
12 '59, that was done by the Warehousemen's millwrights after
13 that?

14 A Volume?

15 Q Yes. In terms of the number of men involved, as best
16 you can. I know this kind of question --

17 A Between one and two.

18 Q So that would be one or two men -- equivalent to one or
19 two men's work that Local 1304 men had done?

20 A If Local 6 men hadn't been there, it would be one and
21 a half.

22 Q Incidentally, was the ILWU millwright whose salary or
23 wage rate followed the contract negotiated with 1304?

24 MR. LEFF: Yes.

25 TRIAL EXAMINER: Although he was called a millwright, was

1 he doing the work of these mechanic machinists? ✓

2 MR. LEFF: Mr. Maffey will be able to answer that, I
3 believe. I believe it was.

4 THE WITNESS: Before the contract came in, this mill-
5 wright and machinist, there was no conflict in the term there,
6 so we knew that the millwrights all belonged to Local 6 of
7 the ILWU, and their primary job was woodworking, oiling, ✓
8 beltmaking, specialized jobs.

9 However, their qualifications were such that for most
10 of the mechanic's work that was later, that 1304 had done
11 previously, not including the machine tool operation, they
12 were qualified to do this and did it.

13 TRIAL EXAMINER: That is after July 31st?

14 THE WITNESS: Exactly.

15 TRIAL EXAMINER: Now, when you say they did it, is what
16 they did comparable to what these mechanic machinists did ✓
17 before?

18 THE WITNESS: Exactly. ✓

19 TRIAL EXAMINER: Exactly. And that is evidently the
20 reason why the millwrights of Local 6's wage scale was the
21 same as the contract negotiated by Local 1304 with the company? ✓

22 THE WITNESS: Comparable. X

23 Q (By Mr. Leff) Mr. Maffey, do you yourself know of your
24 own personal knowledge how much machinist's skill the mechanics
25 listed in Appendix A have?

35

1 Q Yes.

2 A And he had the woodworking knowledge to build flumes,
3 put thread rods for stays on it, and install that, something
4 of a carpenter.

5 Q And how about, did he have anything to do with wooden
6 cog wheels?

7 A Yes. He filled the cog wheels that had wooden teeth.

8 Q What do you mean by filled them?

9 A Well, as they wore, these black wheels, you would remove
10 the wooden teeth and replace them with new wooden teeth. It
11 was a woodworking job, partly.

12 Q Comparing the skills required of him with the skills
13 required of the machinist and the mechanic, how would you say
14 that they compared?

15 A Let's say the machinist had a higher skill than the
16 millwright. X

17 Q How about the mechanic?

18 A And I would say the mechanic was possibly a little low.

19 TRIAL EXAMINER: What is the purpose of all this? I
20 would like to have an offer.

21 What finding do you want me to make on the basis of
22 this?

23 MR. PLANT: This is foundation for my position, Your
24 Honor. It is the wage rate paid the millwright which governed
25 during the back pay period.

1 this context of this situation your personnel people, and
2 evidently the unions themselves; in being agreeable to the
3 same wage rates agree that equal skills are required for the
4 job, no more, no less?

5 MR. PLANT: I think that is true. I am trying to cover
6 all of these bases.

7 This results from the fact I am putting my case in
8 what I think to be is out of order, and I am trying to
9 anticipate what these various contentions from the other side
10 will be.

11 TRIAL EXAMINER: I think the record -- I don't know, but
12 I may be presuming because you know your case better than I
13 do -- but from what I have heard, it seems that until I hear
14 otherwise, that the premises that I made here from what little
15 I know about a complicated situation involving setting up of
16 wage rates, that that is fundamental, the same wages, same
17 skills.

18 MR. PLANT: I take it the witness has testified that the
19 skills of the ILWU millwright lay somewhere in between the
20 skills of the mechanic and the skills of the machinist, and I
21 don't intend to pursue it any further.

22 I have no further questions.

23 MR. ROCHE: The General Counsel has no questions.

24 MR. LEFF: The Union has no questions.

25 TRIAL EXAMINER: You are excused, sir.

(Witness excused)

1 TRIAL EXAMINER: We will take a five-minute recess.

2 (Short recess.)

3 TRIAL EXAMINER: On the record.

4 MR. PLANT: I have a couple of exhibits.

5 The Union introduced yesterday its Exhibit No. 21
6 regarding which I asked the last witness some questions.

7 It is a list, or a schedule, showing the total hours
8 worked by millwrights at Emeryville, that is, the contractor's
9 millwrights, at Emeryville, and during the period from
10 December 24, 1963, to January 9, 1964, January 22, 1964. PL

11 TRIAL EXAMINER: That is the Union's Exhibit 21?

12 MR. PLANT: Yes.

13 TRIAL EXAMINER: Do those dates have any significance
14 here, or were they selected at random, Mr. Leff?

15 MR. LEFF: This was the only information that was given
16 to me by the Company. ✓

17 MR. PLANT: These were taken from records of the con-
18 tractor which we happened to have at Emeryville and are all
19 of the records that we had at Emeryville, and the rest are
20 all down south somewhere.

21 TRIAL EXAMINER: What finding do you want me to make on
22 the basis of that Union Exhibit No. 21?

23 MR. LEFF: The finding is the one that I suggested in my
24 pretrial statement.

25 I think that this shows we added to the millwrights'

1 jobs in Martinez and added to the work that had been done by
2 millwrights that was being done by ILWU millwrights and other
3 production people, that the number of jobs that we contend
4 for is the correct number of jobs.

5 TRIAL EXAMINER: Does that have to do with the availabil-
6 ity of jobs?

7 MR. LEFF: Yes.

8 TRIAL EXAMINER: And your number being what?

9 MR. LEFF: 22 machinists and two helpers as of September
10 13, 1962.

11 TRIAL EXAMINER: And you base that on the number of
12 millwrights, is it, that was employed by the Independent
13 Contractor?

14 MR. LEFF: No. I base this on the establishment at July
15 31, 1959, and the reductions that took place by the
16 elimination of plant and technological change. This was
17 simply a cross-check to show that the figure that I come out
18 with is reasonably accurate because it coincides with the
19 number of people involved in the --

20 TRIAL EXAMINER: What is the figure you come out with?

21 MR. LEFF: 22 machinists and two helpers.

22 TRIAL EXAMINER: That is 24?

23 MR. LEFF: Yes.

24 TRIAL EXAMINER: And there was 53 as of July 31, 1959,
25 right?

1 MR. LEFF: Well, out of the 53, the powerhouse is 14
2 and no one is in issue on the powerhouse. ✓

3 TRIAL EXAMINER: That is 39, and out of the 39 we say
4 that there were 24 left by September 13, 1962, and the ✓
5 company is contending that there were only 16 left.

6 MR. LEFF: Well, we are also pointing out that there ✓
7 weren't 39 jobs, there were only 35.

8 Four of these men were not on the active employment.

9 TRIAL EXAMINER: Now, how does Exhibit 21 that you intro-
10 duced bear that out, Mr. Leff?

11 MR. LEFF: Well, depending upon how one analyzes that,
12 one can arrive at a number of people required by the millwrights
13 which checked with the number of jobs that we contend for.

14 MR. PLANT: In other words, he contends that these
15 figures showing millwright hours worked at Emeryville during
16 this period bear out his contention as to the number of men
17 required.

18 TRIAL EXAMINER: That is putting it more lucidly.

19 In other words, you took the number of hours that were
20 worked by this independent contractor's crew during this
21 period of time that you mentioned and divided it, I suppose,
22 by 40 hours a week and you came out with your number of
23 employees, Mr. Leff?

24 MR. LEFF: Yes.

25 TRIAL EXAMINER: And that was again how many?

1 possibly that -- I wonder in view of the fact that the General
2 Counsel is -- well, you both know each other's phone numbers,
3 I am sure, by now, because it would be very helpful if we
4 could at least get at that point. I think the availability of
5 jobs is extremely important, important as anything in this
6 case.

7 MR. LEFF: May I ask Mr. Plant if he has succeeded in
8 finding comparable data for the Martinez Plant? I think
9 he was going to look for it.

10 MR. PLANT: No, we don't have it.

11 MR. LEFF: This is one of the problems, because the
12 data for the Martinez Plant -- that is this information --
13 must be supplemented before the number of machinists in
14 Martinez --

15 MR. PLANT: We are prepared with a witness on it.

16 MR. LEFF: Later on we might have other evidence on it.

17 TRIAL EXAMINER: The reason why I would prefer to do that,
18 that is, what I suggested, is that it would be better from the
19 standpoint, I am inclined to think, as contrasted with what
20 I would have to arrive at from, let us say, this witness'
21 testimony, Mr. Maffey's, and any witness you may put on, but
22 I can't envisage that you would have the firsthand knowledge
23 that this man would have. So I think it would be to anyone's
24 benefit if something could be worked out here.

25 I will leave it that way and when we come in here

1 Friday, I hope you have made some progress.

2 MR. ROCHE: The General Counsel will make continuing
3 efforts to arrive at some agreement, compromise or stipulation
4 on the number of jobs.

5 TRIAL EXAMINER: As a matter of fact, I am pleased to
6 hear you say that because the way this case is developing,
7 General Counsel whose role is to make a full and complete
8 record and I suppose to see that nothing is withheld and that
9 everything is put on the record here, that you might act as
10 a catalyst in this regard or either that, or I would welcome
11 any figures you would come up with or any thought you would
12 have with regard to what is the proper way to determine the
13 availability of jobs.

14 MR. PLANT: I have one more exhibit, Your Honor. This
15 is a letter the Union introduced in evidence yesterday. It
16 is ^{Exhibit} Exhibit No. 11. It was a letter addressed by Fibreboard
17 to the Union, dated July 30, 1959.

18 TRIAL EXAMINER: Did you say 11?

19 MR. PLANT: Yes.

20 TRIAL EXAMINER: I may have this incorrect.

21 Is this the one I reserved ruling on?

22 MR. LEFF: No.

23 TRIAL EXAMINER: I reserved ruling on 10-B, which is a
24 letter from Mr. Stumpf to the Company dated May 26, 1958. I
25 would like you to keep that in mind.

AFTERNOON SESSION

2:00 P.M.

1 TRIAL EXAMINER SAHM: On the record.

2 MR. PLANT: I call Mr. Crawford.

3 Whereupon,

4 ANGUS L. CRAWFORD

5 was called as a witness by and on behalf of the Respondent,
6 and, having been first duly sworn, was examined and testified
7 as follows:
8

9 DIRECT EXAMINATION

10 Q By Mr. Plant) State your name, please?

11 A Angus, A-n-g-u-s, L. Crawford.

12 Q What is your occupation?

13 A I am a consulting actuary.

14 Q Do you practice here in San Francisco?

15 A Yes.

16 Q Do you live here in San Francisco?

17 A No, Atherton.

18 Q What is your address?

19 A 254 Atherton Avenue.

20 Q Have you had anything to do with the Fibreboard Retirement
21 Plan?

22 A Our firm has been the consulting actuaries on the
23 plan since its inception in September, 1945, and I have been
24 working with the plant since 1946.

25 Q Will you state whether or not the employee deposits made

1 under that plan are the sole financial contribution to the
2 plan?

3 A No, the major portion of the funds come from company
4 contributions.

5 Q How is that done? Do they have something each year, do
6 they, or what?

7 A We determine a normal cost as a percentage of covered
8 salary each year, and certain unfunded liabilities which they
9 put in the plan for past service and improvements in the
10 future, and those are usually funded over a period of years.

11 Q Then what happens?

12 A Well, each year they make an employer contribution based
13 upon the covered payroll of the members of the plant plus
14 a past service contribution.

15 Q Which by "they" you mean Fibreboard?

16 A Fibreboard, yes.

17 Q Now, have you figures with you as to the contributions
18 made by Fibreboard in '58, '59, et cetera?

19 A Yes, I have.

20 Q Will you state how much Fibreboard put into the plan in
21 1958?

22 A In 1958 they put in \$1,444,369.

23 Q How much did Fibreboard put in in 1959?

24 A \$1,340,392.

25 Q In 1960?

- 1 A \$702,422.
- 2 Q In 1961?
- 3 A \$654,104.
- 4 Q Do you have the figure for '62?
- 5 A Yes, \$667,954.
- 6 Q Now, are you familiar with the fact that in -- at the
7 end of July, 1959, Fibreboard terminated its maintenance
8 employees at Emeryville?
- 9 A Yes, I am.
- 10 Q And they did not participate in the plan thereafter?
- 11 A That's correct.
- 12 Q If that had not occurred, if they had continued on the
13 payroll, would that have had any effect upon the amount which
14 Fibreboard would have had to contribute to the plan in 1959?
- 15 A Yes, it would have.
- 16 Q 1960 or 1961?
- 17 A The current service rate would have probably been very
18 close to the same as it was, but due to the additional covered
19 payroll, they would have put in a larger contribution.
- 20 Q Is that true in 1959?
- 21 A Yes, for the balance of the year.
- 22 Q Would it have been true in 1960?
- 23 A Yes.
- 24 Q '61?
- 25 A Yes.

1 Q '62?

2 A Yes.

3 Q That is, they would have had to do this in order to give
4 the plan proper funding, is that correct? ✓

5 A Yes. There are two bases. ✓

6 One is a sound funding method and the other is to make
7 sure it meets the minimum requirements of the Internal Revenue
8 Service to maintain its qualifications as an approved plan. ✓

9 TRIAL EXAMINER: How many employees are covered by this
10 plan?

11 THE WITNESS: Today my recollection is about 1400. ✓

12 Q (By Mr. Plant) Are you talking about the Group E plan?

13 A No, I am talking about the whole plan. It was all one
14 plan for the years you were referring to.

15 MR. PLANT: You may cross-examine.

16 CROSS-EXAMINATION

17 Q (By Mr. Roche) Mr. Crawford, do you have with you the
18 figures for the Company contributions in 1963?

19 A No.

20 Q '64?

21 A No. ✓

22 Q '65?

23 A No.

24 Q Would they be approximately the same or greater or less
25 than they were in '62? ✓

1 A They would be approximately the same. ✓

2 Q In other words, the Company contribution through '64 and
3 '65 would be fairly stable? ✓

4 A Yes, well, within \$100,000.

5 Q Within how much?

6 A \$100,000.

7 Q I would call that fairly stable.

8 Do you know how many employees were covered by the plan
9 back in 1959?

10 A No.

11 Q You stated, I think, there are 1400 employees covered at
12 the present time?

13 A That is my best recollection.

14 MR. ROCHE: No further questions.

15 MR. PLANT: There is another lawyer here who wants to
16 ask you some questions.

17 Q (By Mr. Leff) Mr. Crawford, you mentioned that there
18 were two requirements that determines that the payments be
19 made each year, equivalent to, you say, normal cost each year
20 plus --

21 A -- plus some payment towards an unfunded liability.

22 This was created by granting past service benefits before
23 the plan was in effect. In other words, there were no prior
24 contributions prior to that time. In about 1958 I am not
25 sure improved benefits were served to date up to that point.

1 This was done at Company cost.

2 MR. LEFF: Will you read the answer back to me, Mr.
3 Reporter, please?

4 (Record read.)

5 Q (By Mr. Leff) You stated there were two reasons why
6 that payment was made each year. One was to keep the fund
7 properly funded, is that correct? ✓

8 A One was to keep it actuarially sound so that current
9 operations were charged with their fair share of the pension
10 cost rather than deferring it until retirement and charge
11 the operations in those years against prior retirements. ✓

12 Q Let's deal with that reason. I will get to the second
13 one in a minute.

14 To maintain a fund that is actuarially sound is a decision
15 of the company, isn't it?

16 A Yes.

17 Q And, in fact, the Company could leave all its payments
18 to the time a person retires and charge some later period of
19 production, couldn't it?

20 A It can.

21 Q And, in fact, the plan permits that, does it not?

22 A No, the plan provides that contributions shall be made
23 annually to keep it on a sound, actuarial basis. ✓

24 Q Doesn't it also provide section 26 which states: "Funds
25 will be contributed by the Employer to said trust fund in

1 amounts which, when added to the amounts which have been or
2 are to be accumulated in the trust fund, including members'
3 deposits, are actuarially determined as adequate to provide the
4 retirement and death benefits set forth herein, and shall be
5 paid by the Employer at such time and in such amounts as may
6 be determined by the Board of Directors, subject to the
7 right of discontinuance or termination as provided in Section
8 27."

9 Doesn't the plan provide that?

10 MR. PLANT: The plan speaks for itself.

11 THE WITNESS: Yes. I haven't read the plan in that
12 particular section for many months, but it does say it is to
13 be an amount to keep it on a sound, actuarial basis, doesn't
14 it?

15 TRIAL EXAMINER: Why don't you give him a copy, Mr. Leff?

16 MR. LEFF: I was just about to do that, Your Honor.

17 Q (By Mr. Leff) Let me refer you to Respondent's Exhibit No.
18 6, Page 39.

19 This is part of Section 26, reading in the middle of the
20 page the paragraph that begins, "Funds will be contributed by
21 the Employer," et cetera.

22 Will you read that to yourself, please?

23 A Yes. It says that they will be contributed and are
24 actuarially determined as adequate to provide the benefits.

25 Q It doesn't say when they are to be paid in, does it?

1 A It says, in fact, that they are to be paid in at the
2 discretion of the Board of Directors. ✓

3 Q So, in fact, they could pay it in at the time somebody
4 retires, couldn't they.

5 A As far as this section is concerned. ✓

6 Q I take it, that if there were a higher payroll related
7 to a particular year then this would affect the current
8 service benefits that would attribute to the various members
9 of the plan, is that not right?

10 A It would affect the total service benefits accruing under ✓
11 the plan. It doesn't affect anyone's individual, unless his
12 salary is higher.

13 Q So current service benefits as such are not translated
14 into money for somebody until he retires, that is so, isn't
15 it?

16 A Well, they are not paid out in the form of money until
17 he retires.

18 Q So up until the time somebody retires, his current
19 service benefits are computed and then he gets some money?

20 A The accrual is computed every year, but there is no pay-
21 ments made until the retirement.

22 Q So current service benefits is something that gives a member
23 of the plan something until his retirement and from then on?

24 A Yes.

25 Q The second reason I think you said why payments were made

1 were to satisfy the income tax people, is that correct?

2 A Yes.

3 Q It is correct, it is not, that the income tax people are
4 satisfied if the payment into the fund is equal to the
5 normal cost plus interest from past service?

6 A Yes.

7 Q And the normal cost would be on the payroll that the
8 employer reports, is that correct?

9 A Yes.

10 Q And if the employer reported a different payroll, there
11 would be a different normal cost they would have to compute
12 it on, right?

13 A That's correct.

14 MR. LEFF: No further questions.

15 Q (By Trial Examiner) I'm going to give you a hypothetical
16 case.

17 An employee is employed for some years by Fibreboard
18 under this plan, and he goes into the military service and
19 he is in the military service for three years. Then the
20 Military Act provides that he shall be -- the employer has
21 to reinstate him to his job when he returns from military
22 service. Then he goes back to the job again and he eventually
23 is eligible for retirement.

24 Those three years that he was in military service,
25 would you tell me what effect, if any, do they have upon the

1 A Yes, sir.

2 Q And this Section 15 which provides for "Vesting Period,"
3 and Section 20 which provides for "Optional Early Retirement,"
4 would you tell me in non-actuarial language, so that I
5 could understand what that means?

6 A The plan provides a benefit for service prior to 1945,
7 based upon salary and length of service up to that point. Then
8 every year of employment after 1945, there is a current
9 service benefit which is three-quarters of one per cent on
10 the first thousand and one and a half per cent on the excess
11 salary.

12 So on a \$6,000 person, he would accrue a benefit of
13 \$67.50 a year for a particular year of service. This means
14 that for the year 1955, if he had a \$4,000 -- I mean \$6,000
15 salary, he would get \$67.50 added to his pension account
16 and when he retires at Age 65 he is entitled to that annual
17 amount paid over his future lifetime period.

18 Q It is based, in other words, on his earnings?

19 A Yes.

20 Now, the vesting says that if he has 20 years of service
21 and has reached age 50 when he leaves the company and had, say
22 he had an accrued, a pension, by adding up all these pieces of
23 \$1,000 a year, if he leaves his money, his deposits in the
24 plan when he reaches age 65, he is entitled to that benefit,
25 \$1,000 a year paid in monthly installments for his lifetime.

1 Optional Early is somewhat the same except that the
2 retirement age is 55 and under Optional Early he may defer
3 his benefit until he is aged 65, in which case he receives
4 the amount of \$1,000 a year for the rest of his life.

5 It also requires that he may elect to start receiving
6 it at the age of 55. If he does that, the benefit is reduced
7 because it will be paid over a longer life expectancy.

8 Q You use the age of 50 and 55. Could he retire at the
9 age of 50 and then leave the money in until he is 65.

10 A Yes.

11 Q What is the distinction between reaching 55 and going
12 the same thing?

13 A Well, at age 55 he is entitled to receive monthly
14 payments commencing immediately if he wants on a reduced basis.
15 However, at age 50, all the plan provides is a vested benefit
16 which he is then entitled to when he reaches the age 65.

17 Q Does that take care of Section 20, too?

18 A That is the optional early.

19 Q Now, if a man leaves, could he under that plan of
20 50 and 55 optional retirement do that and still qualify if he
21 were to take a job elsewhere?

22 A Yes.

23 Q He would still qualify?

24 A Yes.

25 Q But if he leaves the company about the time before he

1 is 50, he has to draw his money out?

2 A Yes, unless it is a disability case.

3 Q Unless it is a disability?

4 A Yes.

5 TRIAL EXAMINER: Thank you.

6 REDIRECT EXAMINATION

7 Q (By Mr. Plant) This military service matter that you were
8 describing that was covered by an express provision in the
9 plan?

10 A Yes.

11 Q Where is that provision now?

12 A It is on Section 11(bii). As far as past service benefits
13 on the employer on service with the armed forces -- excuse me
14 -- on the employee on service with the armed forces who are
15 eligible to receive past service benefits in accordance with
16 Section 7(c) and Section 7(d), and who entered the employer's
17 employee subsequent to January 1, 1940, the retirement plan
18 committee shall determine the past service compensation so
19 that it fairly represents the employee's normal compensation
20 and normal working time in the first two years of his employment
21 by the employer, except as provided in iii below."

22 Q You don't have to read them all out loud. And --

23 A And the three below -- by glancing at it now it looks
24 like in 1950 they stopped providing military service benefits.

25 We deal with about 400 corporate plans that are all

1 different.

2 TRIAL EXAMINER: Let us suppose that instead of there
3 being an interrupted period of an employee being in the military
4 service, let's say there was three years of sickness or two
5 years of sickness, let us say, and he has gotten a leave of
6 absence from the company. Perhaps there are other reasons.
7 And let us suppose that there are five years' service behind
8 at the time that this happens. What provision is made in that
9 case?

10 THE WITNESS: He is not considered a termination of
11 employment. There is no added benefit for the period of
12 leave of absence but his benefits accrued prior to that time
13 are still available so that when he comes back to work and
14 accrues more current service benefits, they will be added.
15 However, the period of the leave of absence --

16 TRIAL EXAMINER: -- is a so-called dead period?

17 THE WITNESS: Yes.

18 TRIAL EXAMINER: Can that dead period under any circum-
19 stances under that plan there provide that although he may
20 not get any credit for the amount for accumulating with
21 respect to the amount his pension will eventually be, is there
22 any provision that under those circumstances he nevertheless
23 can accumulate for the amount of time, let us say, that he is
24 sick?

25 THE WITNESS: Yes. The time counting toward eligibility

1 for vesting early retirement. However, it doesn't affect the
2 dollar benefit.

3 TRIAL EXAMINER: Now, in that case, does the company pay
4 any money into the fund?

5 THE WITNESS: Not during the time of his leave of absence.

6 TRIAL EXAMINER: But if, let us say, in an unusual case
7 where a great number of people qualified under that type of
8 provision for one reason or another, the company, as I under-
9 stand it, has to keep the fund solvent?

10 THE WITNESS: Yes.

11 TRIAL EXAMINER: Might they, in such a situation, have
12 to pay in in order to keep it solvent?

13 THE WITNESS: Only if we had made certain actuarial
14 assumptions that weren't being borne out, such as the
15 interest rate assumed higher than the fund was earning.
16 However, in that case, there was no company contribution
17 because that would be part of the current contribution.

18 TRIAL EXAMINER: Who determines whether or not the
19 fund needs -- whether it is solvent or not? ✓

20 THE WITNESS: We do as consulting actuaries.

21 TRIAL EXAMINER: I see. ✓

22 Q (By Mr. Plant) Taking up this last line of examination
23 a little bit more, we have a case of a man who has been
24 working for a number of years, making contributions to the
25 plan and then, say, he is on leave of absence for a period

1 of time. Now, as I understand you, you say that that leave
2 of absence would count as service for the purpose of determin-
3 ing whether it was vesting or not?

4 A Yes.

5 Q But would not affect the dollar amount of the benefits
6 payable?

7 A That's right.

8 Q Now, let's suppose that in such a case you were to
9 credit this man with deposits which he never made, earnings
10 which he didn't have, and with deposits which he never made,
11 would that affect the funding of the plan?

12 A Yes, it could be funded really at two times. It could be
13 funded during the period of a leave or it could be funded
14 after he returned. That is the same case with the military.
15 It would be funded after he returned.

16 Q Who would have to put up the money?

17 A The employer.

18 Q Regardless of when he puts up the money, he has to put
19 up the money for that period, is that right?

20 A Yes.

21 MR. PLANT: Nothing further.

22 RECROSS EXAMINATION

23 Q (By Mr. Leff) Mr. Crawford, you say that the consulting
24 actuary determines if the fund is solvent. I take it that
25 as far as contributions are concerned you make a recommendation

1 to trustees?

2 A We make a recommendation to the company.

3 Q And then the company normally follows your recommendation
4 and makes a contribution?

5 A Yes.

6 Q And now the data that is supplied to you by the company
7 on the amount of payroll and the amount of deposits are what
8 you go on when you make your recommendation, is that correct?

9 A Yes.

10 Q And so if the company changed that information you would
11 come back with a different recommendation.

12 To be more specific, if the company reported to you
13 that for a given period of time you should consider that
14 earnings were this much higher --

15 A Well, they give us the actual earnings on every individual
16 employee covered by the plan.

17 Q Right. And if they came back and reported to you that
18 we want -- for this period we want you to consider that
19 actual earnings were higher, then I would take it you would
20 change your recommendation?

21 A No. I mean, you say they wanted us to consider that
22 the actual earnings were higher than they really were? Well,
23 if they made a mistake --

24 Q Let me be specific. I will put it in a form of a
25 hypothetical question.

1 Let us assume that as a result of this proceeding, that
2 there was an order to the Court -- an order to the company
3 that they were to give current service benefits for a given
4 period of time for employees as though they had earned a
5 given amount and they were to inform you of this and asked
6 you to inform them as to what the recommendation is as to the
7 funding required, that would change your recommendation as
8 to the funding required?

9 A That's right.

10 Q And as far as the individuals are concerned, the
11 individual employees, they wouldn't get benefits until they
12 were retired, is that right?

13 A That's right.

14 MR. LEFF: Nothing further.

15 MR. PLANT: Nothing further.

16 MR. ROCHE: I have a question.

17 Q (By Mr. Roche) Mr. Crawford, in the event an employee is
18 on layoff status, let us say, under the plan, he receives
19 credit for the time that he is on layoff up to a period of 12
20 months, is that right?

21 A Yes.

22 TRIAL EXAMINER: What section is that?

23 MR. ROCHE: 5(b) on pages 14 and 15 of the booklet.

24 Q (By Mr. Roche) Now, this employee who is on layoff status
25 receives retirement credit for the time he is on layoff,

1 MR. PLANT: I call Mr. Sandin.

2 Whereupon,

3 JOHN PHILLIP SANDIN

4 was called as a witness by and on behalf of the Respondent,
5 and, having been first duly sworn, was examined and testified
6 as follows:

7 DIRECT EXAMINATION

8 Q (By Mr. Plant) What is your name, sir?

9 A John Phillip Sandin, S-a-n-d-i-n.

10 Q Where do you live?

11 A 129 San Gabriel Drive, Concord.

12 Q What is your occupation?

13 A Plant Engineer at the Martinez Roofing Plant. ✓

14 Q Martinez Roofing Plant of the Fibreboard Corporation?

15 A Yes.

16 Q How long have you been at the Martinez Roofing Plant?

17 A Since it started in March of 1962. ✓

18 Q There was an interval, was there, between the time that
19 the roofing plant closed at Emeryville and before Martinez
20 actually started up? Sec 642-✓

21 A Yes, approximately two months, two and a half months, I
22 guess.

23 Q Now, during the period from the time the roofing plant
24 started up at Martinez until January of 1965, will you state
25 whether or not you had any particular problems with that plant

1 up there?

2 A Yes, we had many problems for the first two years. We
3 built and rebuilt many parts of the plant in that period.

4 Q At that time, you had an independent contractor in there
5 did you?

6 A Yes.

7 Q Who was that?

8 A Well, Pierose or Fluor. It was Fluor in the beginning
9 and then Pierose Corporation.

10 MR. PLANT: I don't know whether this is clear to Your
11 Honor, but Pierose took over Fluor's business. Is there any
12 question on that?

13 MR. ROCHE: No question, but I would like the Reporter
14 to know the spelling of Fluor and Pierose, and the spelling
15 is F-l-u-o-r and P-i-e-r-o-s-e.

16 Q (By Mr. Plant) Now, this building and rebuilding that
17 was done up there was done by whom?

18 A By the contractor at the plant.

19 Q Did his employees do all of the work involved, such as
20 pipefitting, welding, electrical work?

21 A Yes.

22 Q Rigging?

23 A Yes.

24 Q Was there much of that necessary?

25 A Yes. During this troubled period we did a lot of this,

1 a lot of fabrication of new things, and this constituted
2 rigging, of course, and welding, pipefitting.

3 Q During the time that you were there prior to January,
4 1952 -- pardon me -- '55, excluding the welding, pipefitting,
5 electrical work, rigging, what was the maximum number of men
6 required to maintain the plant

7 A Well, excluding this other work, five, I would say.

8 Q Would you include in the work of that five, the truck
9 repair work?

10 A Yes.

11 MR. PLANT: No further questions.

12 CROSS-EXAMINATION

13 Q (By Mr. Leff) Mr. Sandin, what was your position before
14 you went up to Martinez?

15 A I was in the Wilmington Plant prior to that as Plant
16 Engineer.

17 Q Wilmington, you say?

18 A Wilmington roofing plant, yes.

19 Q That has nothing to do with Emeryville?

20 A No.

21 Q Did you testify that the interval between the Emeryville
22 Roofing Plant closing and the starting up at Martinez was two
23 or three months?

24 A Well, I base this on -- I know the roofing machine ran
25 until January 30th or 31st of '62 in Emeryville and we started

1 March 25th, I think it was, so it is about two and a half
2 months.

3 MR. PLANT: March 25th of what year?

4 THE WITNESS: '62.

5 Q (By Mr. Loff) I think that answers the question I had
6 when Merryville called, and you think it was January?

7 A I am quite sure it was.

8 Q Do you know who built the Martinez Plant?

9 A Do you mean the contractor?

10 Q Yes.

11 A Well, we had many contractors.

12 Engineering acted as a general contractor in this
13 project.

14 Q More specifically, it wasn't Fluor or Pierose who built
15 the Martinez Plant, was it?

16 A No.

17 Q So the work that was done after that in building it and
18 rebuilding the parts of the equipment, I take it it was redesign
19 work that was done inside, is that it?

20 A That was done in the plant, yes.

21 Q And that you and the draftsmen and the designers and
22 engineers under your command in essence redesigned parts of the
23 plant in order to do the job better, is that right?

24 A Yes.

25 Q And then you had the draftsmen who were in the plant then

1 do this work, is that right?

2 A Yes, that is right.

3 Q Now, in this period when you were building and rebuilding,
4 how many employees did the contractor have working up there?

5 A Oh, it varied. I can only speak from November of '62
6 because I wasn't in the maintenance function until then. I
7 was involved in production.

8 Q Well, let's take from November --

9 A The period that I can remember, we had around -- this
10 is eight millwrights or pipefitter combinations.

11 Q Eight millwrights or millwright pipefitters?

12 A No, I mean to say eight total, maybe one was a pipefitter
13 and seven were millwrights, something like that. That was
14 probably true for a year.

15 Q That would be from November of '62 to November of '63?

16 A Approximately, I think.

17 Q And from November of '63 on, could you estimate, then,
18 how many millwrights and how many pipefitters you needed?

19 A Well, we went down then to --

20 Q To the five figure you mentioned?

21 A We went from seven, six and on down to five, yes,
22 depending upon the amount of rebuilding work and the work
23 load of the plant production.

24 MR. PLANT: The five figure was for work exclusive of
25 rigging, welding, pipefitting and so forth.

MR. LEFF: Yes, I got that, Mr. Plant.

Q (By Mr. Leff) I take it, now, that the 1304 men at your plant do pipefitting and welding as well as millwright's work or what you call millwright's work?

MR. PLANT: Millwright's or machinist's?

MR. LEFF: I am using the term that Mr. Sandin used.

MR. PLANT: He didn't use that term.

MR. LEFF: He said seven millwrights and one pipefitter.

MR. PLANT: What is the question?

Q (By Mr. Leff) Now, the 1304 men that are up there, are they doing pipefitting and welding as well as millwright's work?

MR. PLANT: Well, it doesn't appear that they are doing any millwright work. The question is misleading. I will object to it upon that ground.

Q (By Mr. Leff) Do you understand the question, Mr. Sandin?

A Not exactly, because there is a difference, I guess, between millwright work, so-called, and machinist's work.

Q Let me put it this way: The men that you have now up in Martinez and Mr. Bradford I know is one of them, and Mr. Longnecker is another one, that are members of Local 1304 and working in the maintenance function up in Martinez, they do pipefitting and welding as well as machinist's work and mechanic's work, is that right?

1 A That's right.

2 MR. LEFF: No further questions.

3 REDIRECT EXAMINATION

4 Q (By Mr. Plant) What is the total number you have?

5 A Five.

6 MR. PLANT: Nothing further.

7 TRIAL EXAMINER: Anything further?

8 MR. PLANT: Nothing further.

9 MR. ROCHE: Nothing further.

10 MR. LEFF: Nothing further.

11 TRIAL EXAMINER: You are excused. Thank you.

12 . (Witness excused)

13 TRIAL EXAMINER: Off the record.

14 (Discussion off the record.)

15 TRIAL EXAMINER: On the record.

16 MR. PLANT: That finishes my witnesses, Your Honor.

17 TRIAL EXAMINER: Off the record.

18 (Discussion off the record.)

19 TRIAL EXAMINER: On the record. We will stand in recess--

20 well, if it wasn't on the record, I want to state it now,

21 that Respondent has indicated that he rests.

22 MR. PLANT: There is one thing I can do before we adjourn.

23 I promised counsel that I would reproduce the testimony of

24 Mr. Groulx and add it to our exhibit containing the testimony

25 at the contempt hearing.

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P R O C E E D I N G S

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TRIAL EXAMINER SAHM: On the record.

MR. LEFF: Your Honor, I would like to propose a stipulation relating to a matter that came up previously.

The Union will propose the stipulation that the rate of \$4 per hour for machinists that was negotiated in the contract effective July 15, 1965 was made retroactive to the date the first man was rehired in 1965.

MR. PLANT: So stipulated.

MR. ROCHE: So stipulated.

TRIAL EXAMINER: What was that date?

MR. LEFF: I believe it was March 22nd, 1965.

TRIAL EXAMINER: March what?

MR. LEFF: 22nd, 1965.

TRIAL EXAMINER: Noted and approved.

MR. ROCHE: General Counsel has some stipulations to propose.

TRIAL EXAMINER: Very well.

MR. ROCHE: General Counsel proposes to stipulate that terminated employees, Swisher and Yoch, if called as witnesses in this proceeding would testify that when they were hired by Fibreboard in 1959 they were not told that their jobs were temporary or that they would be employed only until other employees returned to work.

MR. LEFF: So stipulated.

1 MR. PLANT: So stipulated.

2 TRIAL EXAMINER: Noted and approved.

3 MR. PLANT: In that connection, I call your Honor's
4 attention to the fact that the collective bargaining contract
5 provides for a probationary period of 90 days at any time
6 during which a man can be terminated without cause and that it
7 also contemplates lay-offs when work is available.

8 TRIAL EXAMINER: Now, when were they hired?

9 MR. ROCHE: In July of 1959.

10 MR. LEFF: July 20th.

11 MR. ROCHE: I propose to stipulate that they were hired
12 July 20th, 1959.

13 MR. PLANT: So stipulate.

14 MR. ROCHE: Mr. Leff?

15 MR. LEFF: Yes, so stipulated.

16 MR. ROCHE: General Counsel also proposes to stipulate
17 that Mr. Maffee if recalled as a witness in this proceeding
18 would testify that since January 18, 1965, Local 1304 Machinis
19 employed by the Respondent at Emeryville have been doing pipe-
20 fitting and welding-rigging work as a part of their job.

21 MR. PLANT: I am willing to so stipulate but I don't see
22 the materiality of it.

23 MR. LEFF: The Union will so stipulate.

24 MR. PLANT: I will stipulate subject to objection to the
25 materiality of the facts stipulated.

1 TRIAL EXAMINER: Well I think the stipulations like
2 other testimony, it is a question of the written documents and
3 so on.

4 I am only passing on admissibility and not probative value.

5 MR. PLANT: General Counsel is not contending is he, that
6 rigging and welding and pipefitting were part of the work of
7 the bargaining unit prior to August 1st, 1959?

8 MR. ROCHE: That is correct, I am not contending that.

9 TRIAL EXAMINER: Very well, noted and approved and the
10 context of these matters here, I had occasion in one of the
11 decisions to read what the unit is.

12 Does anyone have here with them what the appropriate unit
13 in this case is?

14 MR. PLANT: I have a copy of the contract.

15 TRIAL EXAMINER: It seems to me -- I am wondering after
16 reading what that appropriate unit is, we have had some
17 testimony with respect to skills of mechanics and machinists.

18 The term has been used interchangeably. One does the
19 work sometimes of others and less rudimentary aspects of the
20 other's trade, and I fail to see anything in there in describing
21 those employees who comprise the appropriate unit that led
22 me to think that a good deal of this testimony with respect
23 to skills and so on might very well be irrelevant.

24 MR. PLANT: Well, the collective bargaining contract
25 referred to three classifications, I guess four classifications

1 held on September 21st and September 22nd, 1959 and that
2 the said misconduct issue was not raised thereafter before
3 the Board, before the Court of Appeals or before the United
4 States Supreme Court.

5 MR. PLANT: Your Honor, I reject the stipulation. The
6 record in this case speaks for itself and furthermore I am
7 not going to enter into any stipulations here that have not
8 been discussed with me first.

9 I am tired of having these things flung at me cold.

10 TRIAL EXAMINER: Do you have any more stipulations?

11 MR. ROCHE: That is the only one I have and I would like
12 to say on that that I realize that I hadn't mentioned this to
13 Mr. Plant before but I thought it was a matter of general
14 knowledge and admission by all parties.

15 It is true the record does speak for itself but in lieu of
16 submitting to your Honor, the entire transcript of the first
17 proceeding, I thought we might get a stipulation on that as a
18 fact because it is a fact.

19 TRIAL EXAMINER: Well, suppose counsel see if you can
20 discuss that last stipulation and we will take five minutes
21 and then we will go back on the record.

22 MR. ROCHE: Very well.

23 (A short recess was taken.)

24 TRIAL EXAMINER: On the record.

25 MR. ROCHE: In an off-the-record discussion with counsel

1 for Respondent he agrees that the dates included in the
2 stipulation as to Arca's leave of absence are correct.

3 Respondent's counsel also indicated his willingness to
4 stipulate and I hereby propose to stipulate that the issue
5 as to the alleged misconduct of terminated employees, Arca,
6 Beck and Olson was not raised in the original hearing before
7 the Trial Examiner or thereafter before the Board.

8 MR. PLANT: I am not willing to so stipulate.

9 MR. ROCHE: I thought you were.

10 MR. PLANT: I am willing to stipulate that the issue was
11 not before the Trial Examiner or the Board.

12 TRIAL EXAMINER: What is your theory about that, that the
13 Respondent is precluded now from raising it?

14 MR. ROCHE: That is correct, your Honor.

15 TRIAL EXAMINER: Well, I have had occasion recently in
16 connection with another case in which the General Counsel for
17 the first time as far as I know consolidated a complaint case
18 with a backpay proceeding and tried it in the same proceeding
19 and I found thereon the basis of Dean Hardware and what the
20 Supreme Court had to say that it couldn't be done, that they
21 are separate and distinct proceedings.

22 For instance, how could I take testimony with respect to
23 backpay in the backpay proceedings a part of the consolidated
24 proceedings which would be tantamount to me finding the
25 Respondent guilty as charged before I had to find that as a

1 predicate to getting into the backpay so I severed the cases
2 and found later on that the General Counsel tacitly
3 acknowledged that I was correct in the deconsolidation of those
4 proceedings and it would seem to me here that the question
5 of reinstatement and the conduct which was claimed to deny
6 these men reinstatement would be backpay matter and it could
7 be properly be brought up before the Trial Examiner at that
8 time; that is when the complaint case was being heard.

9 So I fail to see what the basis for your stipulation is
10 with respect to what use I shall make of it in this backpay
11 proceeding.

12 MR. ROCHE: Well, the theory of the Board as it has been
13 affirmed by the courts is that the right to reinstatement is
14 a matter of remedy and it is properly considered in the
15 original proceeding and that it is not properly considered
16 in the backpay proceeding if it has not heretofore been
17 raised and I was prepared to argue and cite cases the other
18 day on this point for your Honor and indicated at that time
19 since you did not seem inclined to reconsider your ruling that
20 I would argue the point in the brief.

21 TRIAL EXAMINER: Well, you go ahead.

22 MR. ROCHE: There are numerous cases on the point.

23 TRIAL EXAMINER: If you care to cite them you go right
24 ahead.

25 MR. ROCHE: As I say, I had my citations with me at the

1 time.

2 TRIAL EXAMINER: Then I suggest you put them in your
3 brief, then.

4 MR. ROCHE: Would you care to propose a stipulation
5 acceptable to you on that, Mr. Plant?

6 MR. PLANT: Yes, I am willing to stipulate that the
7 question whether Messrs. Olson, Arca and Beck were dis-
8 qualified for backpayment and reinstatement by reason of their
9 conduct in connection with the picketing of the plant was
10 not before the Trial Examiner or the Board in the unfair labor
11 practice proceeding.

12 MR. ROCHE: General Counsel would so stipulate.

13 Mr. Leff?

14 MR. LEFF: The Union will so stipulate but I agree with
15 Mr. Plant that the record will speak for itself.

16 TRIAL EXAMINER: Noted and approved.

17 This was an 8(a)(5) proceeding. You are sure it doesn't
18 have reference to 8-3 cases?

19 MR. ROCHE: There are situations similar. This case, of
20 course, was an 8(a)(1), (3) and (5), originally.

21 TRIAL EXAMINER: Well, when the Trial Examiner originally
22 decided the C case, was the 8-3 matter before him?

23 MR. ROCHE: The Trial Examiner dismissed --

24 MR. PLANT: He dismissed that.

25 TRIAL EXAMINER: Then it wasn't before him.

1 MR. PLANT: He ruled that it had no merit.

2 TRIAL EXAMINER: Then all he was deciding was the 8-5.

3 MR. PLANT: Well, he decided both cases but he decided
4 the 8-3 case adversely to the General Counsel.

5 TRIAL EXAMINER: I mean for purposes in which this matter
6 arises all he was deciding was 8-5?

7 MR. PLANT: Right.

8 MR. ROCHE: With regard to the number of jobs, your Honor,
9 the General Counsel was hopeful of being able to arrive at an
10 agreement of all parties which would be of assistance to your
11 Honor in drafting the decision in this case.

12 By that I mean I had hoped to be able to leave this record
13 clear in agreement as to the number of jobs available in
14 Emeryville, in Martinez, et cetera.

15 I have a stipulation which I would like to propose. If
16 it is acceptable I think it will simplify the matter of
17 writing a decision.

18 If it is not acceptable to any party besides myself, at
19 least, it will show the General Counsel's current position as
20 to the number of jobs.

21 MR. PLANT: Well, now, counsel, is this the proposed
22 stipulation which you read to me over the telephone yesterday?

23 MR. ROCHE: It is.

24 MR. PLANT: Well, I told you then it was not acceptable.
25 Now, why bring it up here?

1 MR. PLANT: No, no. I beg to differ with you.

2 TRIAL EXAMINER: I pointed out at that point his testimony
3 went on to the effect that those five was the complement at
4 that plant for some period of time and I think I made a
5 comment that that would seem to indicate that the maintenance
6 force there of machinists had leveled off to five because it
7 remained constant at that number for some period of time
8 thereafter.

9 MR. PLANT: Are you referring to the testimony of Mr.
10 Sandin?

11 TRIAL EXAMINER: I can't recall the names of these men.

12 MR. PLANT: He did testify at the present time there are
13 five machinists employed at Martinez, that they do not only
14 the work which was formerly was the work of machinists but
15 also do rigging, welding and pipefitting.

16 MR. LEFF: Your Honor, may I say this: There have been a
17 number of times in this proceeding where Mr. Plant has said
18 something very positively and then subsequently checked and
19 had to revise his statement.

20 MR. PLANT: Now, counsel I reject the proposed stipulation.

21 MR. LEFF: I believe his stipulation accurately reflects
22 his testimony.

23 TRIAL EXAMINER: Now, I am not interested at this point
24 since you can't agree on the stipulation, but I intend to go
25 into this for my own information. Now, what is the contention

1 of the Respondent without a breakdown as to the number of
2 jobs available.

3 MR. PLANT: There was 16 machinists jobs, your Honor.

4 TRIAL EXAMINER: 16.

5 MR. PLANT: There were no helpers jobs and on the power-
6 house, why there is no question on that.

7 TRIAL EXAMINER: So your contention is there is 16 jobs
8 available?

9 MR. PLANT: Right.

10 TRIAL EXAMINER: Now, the General Counsel and the Union,
11 what is the total number you contend?

12 MR. LEFF: 24, your Honor.

13 TRIAL EXAMINER: And that breaks down how?

14 MR. LEFF: 22 machinists and two helpers.

15 TRIAL EXAMINER: Where do you part company with the
16 Respondent?

17 MR. LEFF: Your Honor, we part company in a number of
18 places in analyzing it through and I think we also part company
19 on what the testimony shows as to what the contractor actually
20 did in that period.

21 Now, as far as our analysis we say that we start off at
22 August 1st, 1959 with 37 jobs, not 35 which is what the company
23 contends and the difference arises there in the following
24 respect:

25 There were four men, Jobe, Holmes, Arca and Vanderbeck who

1 on July 31st, 1959 were not working at that date as machinists.

2 Holmes and Jobe were ill. Arca was on leave of absence
3 for Union business and Vanderbeck had been temporarily
4 transferred as a fireman.

5 The company claims that Swisher and Yoch, the men that
6 were hired on July 20th, 1959, replaced two of those men and
7 the other two were not replaced at all.

8 Now, we contend that if Vanberbeck and Arca had returned
9 that nobody would have fired, would have been fired in the
10 sense the establishment included room for those two men so
11 the number of jobs at that date was 37 and not 35.

12 Now, we differ as to the effect of various reductions
13 thereafter, your Honor.

14 The company contends that there were jobs eliminated, I
15 believe, in the felt mill and the paint shop. ✓

16 We contend that that work as such was not eliminated. It
17 was given to other people to do. ✓

18 The company contends that in the move of the roofing
19 plant to Martinez a helper was lost. We contend that that
20 wasn't so at all. ✓

21 In fact, the work was there. If they gave it to a
22 Millwright to do instead of a helper it didn't eliminate a
23 helper's job. ✓

24 I think that we also differ in the extent of the general
25 reduction in the main shop. The company contends that there

1 was a reduction of seven. We say there was a reduction of
2 five jobs and the net result is a total difference of eight
3 jobs and I think if you compare our Exhibit 2 to our pre-trial
4 statement of which your Honor, I shall submit it as an exhibit
5 because I don't think the pre-trial statements are in
6 evidence.

7 I will submit that table as an exhibit. That table compares
8 to Schedule 2 of the Employer's appendix shows the comparison
9 of how we differ as to where the jobs went and we contend
10 that the evidence of what the contractor's men, the number of
11 men actually required or the work actually required of the
12 contractor in that period is consistent with the number
13 that we are claiming.

14 TRIAL EXAMINER: Now, you have a partial record, as I
15 recall, of the number of men the contractor was employing.

16 MR. LEFF: That is right.

17 TRIAL EXAMINER: Now, what period of time was that?

18 MR. LEFF: That covers the end of '63 to the end of the
19 backpay period, a bit more than the year.

20 TRIAL EXAMINER: What does that show?

21 MR. LEFF: Your Honor, Mr. Plant, in Respondent's Exhibit
22 18 comes up with 13 and a quarter men in Emeryville.

23 Now, I would suggest that in the detailed computation
24 that Mr. Plant made he arrived at a lower figure than there
25 should be because he didn't take into account the extent of shift

1 TRIAL EXAMINER: Well, perhaps so much has gone in as I
2 say I can't recollect.

3 All right. We will take a few minutes and then we will
4 start off with our first witness for today.

5 (A short recess was taken.)

6 TRIAL EXAMINER: On the record.

7 MR. ROCHE: At this time General Counsel calls as a
8 witness Lincoln Beck.

9 Will you step forward, Mr. Beck, please.

10 Whereupon,

11 LINCOLN ERNEST BECK

12 was called as a witness by and on behalf of the General
13 Counsel and, having been first duly sworn, was examined and
14 testified as follows:

15 DIRECT EXAMINATION

16 Q. (By Mr. Roche) Would you state your name and address for
17 the reporter, please, Mr. Beck?

18 A. Lincoln Ernest Beck.

19 Q. Are you hard of hearing?

20 A. Yes, sir.

21 Q. Were you formerly employed by Fibreboard Corporation?

22 A. Yes, sir.

23 Q. And how long did you work for Fibreboard prior to July
24 31st, 1959?

25 A. Better than 24 years, sir.

1 Q. Did you participate in the picketing of Fibreboard's
2 Emeryville plant in August of 1959?

3 A. Yes, sir.

4 Q. And how frequently were you in the area of the picketing
5 during August?

6 A. Regularly, sir.

7 Q. Were you there every day or almost every day?

8 A. Almost every day.

9 Q. Calling your attention, Mr. Beck, to August 10th, 1959,
10 did you see Mr. Bradford of the Pulp and Sulfite Workers on
11 or about that date?

12 A. Yes, sir.

13 Q. And where did you see him?

14 A. At the northeast corner of Hollis and 64th Street.

15 Q. And where were you at the time?

16 A. At the same spot.

17 Q. And what time of day was this approximately?

18 A. Between the hours probably of 6:30 and 7:00 o'clock.

19 TRIAL EXAMINER: Has it been brought out where he is
20 presently employed?

21 MR. ROCHE: No.

22 Q. (By Mr. Roche) Are you presently employed, Mr. Beck?

23 A. Am I now employed?

24 Q. Yes.

25 A. Self-employed, sir.

1 Q. You are operator of the Lincoln machine shop?

2 A. That is right, sir.

3 Q. And where is that located?

4 A. It is located in Pleasant Hill.

5 Q. Now, where was Mr. Bradford when you first saw him on
6 August 10th, 1959?

7 A. Mr. Bradford was in a discussion with Mr. Stumpf of,
8 International representative of the Steelworkers, Mr. Lloyd
9 Ferber, Business Representative of Local 1304 and Mr. Bradford
10 who respresented the Pulp and Sulfite Workers International.

11 MR. PLANT: I move to strike the answer as being non-
12 responsive. The question was where did he see Mr. Bradford.

13 Q. (By Mr. Roche) Where was this discussion taking place?

14 MR. PLANT: Just a moment. I haven't had a ruling on my
15 motion.

16 TRIAL EXAMINER: Yes, I think that the objection is well
17 taken. As I understood the question is where did you see Mr.
18 Bradford for the first time on August the 10th.

19 THE WITNESS: At the northeast corner of 64th and Hollis
20 Streets.

21 Q. (By Mr. Roche) And what was Mr. Bradford doing at that
22 time?

23 A. He was in a discussion with Mr. Stumpf, Mr. Ferber,
24 pertaining to their business.

25 Q. Did you hear any part of this discussion?

1 A. I didn't hear it, no, sir.

2 Q. Were you present when that discussion ended?

3 A. Yes, sir, I was.

5 4 Q. And would you tell us in your own words what Mr. Bradford
5 did after the discussion ended?

6 A. After the discussion Mr. Bradford came out of the group
7 of people into the street of 64th whereupon, I stopped him
8 and asked him what they had decided to do.

9 Q. You may continue; go ahead.

10 A. I asked Mr. Bradford what they intended to do and decided
11 to do and he brushed off my answer and no answer and continued
12 to go on by me and I blocked his way.

13 Q. Did you come in contact with Mr. Bradford when you blocked
14 his way?

15 A. Yes, I did.

16 Q. Now, would you describe for his Honor, the contact that
17 you made with Mr. Bradford?

18 A. Well, I blocked his way in that he was attempting to
19 continue in the direction that he was headed and I took the
20 attitude that if he wanted to go that way he could go around me
21 and he didn't decide to do that and I didn't make any effort
22 to move out of his way.

23 Q. Did you lay hands on Mr. Bradford at any time?

24 A. No, sir.

25 Q. Where were your hands?

1 A. In my pockets.

2 Q. And what sort of contact did you have with Mr. Bradford;
3 did you bump into him or what?

4 A. It was a body bumping deal. Mr. Bradford had made up
5 his mind that he was going through there and I had made up
6 my mind that I wasn't moving out of his way to let him go by
7 so we came into this body bumping which consisted of him
8 advancing and I would block him with my shoulders.

9 The first time was probably a stopping action; the
10 second time it was a more determined effort on his part to
11 go through and a more determined effort on my part to stop
12 him.

13 The third time he was much more determined to go through
14 and I helped him make up his mind; I hit him or bumped him
15 with my shoulder whereupon he stumbled backwards out of one
16 or both of his slippers and that was it.

17 Q. What kind of slippers was Mr. Bradford wearing?

18 A. It appeared to be some type of a bedroom slipper. There
19 was no heel, just the toe covering type.

20 Q. Now, how did this incident come to an end; how did it
21 end up?

22 A. It was either the Chief of Police or the Sergeant across
23 the street on the northwest corner of 64th and Hollis, one of
24 the other policemen hollered over to us to break it up and get
25 out of the area.

1 Q. And did you do so?

2 A. I did.

3 Q. During this incident with Mr. Bradford, did he lay his
4 hands on you at any time?

5 A. I don't think so.

6 Q. Did he bump you?

7 A. We were bumping each other, yes.

8 Q. Now, Mr. Beck, calling your attention to August 19, 1959,
9 there has been testimony in this proceeding that Mr. Parker
10 and Mr. Hanger approached the plant on that day.

11 Were you on picket duty at the time?

12 A. I was, sir.

13 Q. And where was your station as a picket?

14 A. At the entrance to the Fibreboard Products at 64th and
15 Overland Street.

16 Q. Were you at that picket station alone or with some other
17 person?

18 A. There was another person with me, yes, sir.

19 Mr. Cornell.

20 Q. And who was, was with you?

21 A. Mr. Cornell.

22 Q. And who is Mr. Cornell?

23 A. Mr. Cornell is the plant manager of Fibreboard Paper
24 Products, floor covering division.

25 Q. And how long was Mr. Cornell with you at your picket

1 station?

2 A. Approximately 30 minutes.

3 Q. And what did you and Mr. Cornell do during that period?

4 A. It was the purpose of Mr. Cornell and myself, it was
5 his desire to have the office personnel and the people that
6 he desired in there to pass the picket line. It was my duty
7 to accept and help pick out the proper people, assisting him
8 in identifying his people to go through our picket line.

9 Q. His people were what type of employees?

10 A. Management people for Fibreboard Paper Products.

11 Q. And while you were there with Mr. Cornell, did you pass
12 any employees into the plant?

13 A. No employees, not employees or production type people.

14 Q. I mean any of Mr. Cornell's people.

15 A. Yes.

16 Q. And approximately how many people did you pass into the
17 plant?

18 A. As I recall, in fact I believe all of them entered in
19 automobiles, and there was from two to maybe four in each car.
20 I would say 20 to 25, guessing.

21 Q. Now, approximately what time was it that you and Mr.
22 Cornell started this procedure?

23 A. Approximately 9:30.

24 Q. And approximately what time did you finish with Mr.
25 Cornell?

1 A. Approximately 10:00 o'clock.

2 Q. Now, at the time you finished with Mr. Cornell, what did
3 he do?

4 A. He left and entered into the plant proper.

5 Q. Did Mr. Cornell have anything to say to you when he was
6 leaving you?

7 A. Except that it was his feeling that possibly the ones
8 that had already passed was the bulk of his people. So far
9 as he knew, he didn't know of any others that might come.
10 However, he did indicate there could be some more, and it
11 would be up to my judgment as to the best outcome.

12 MR. PLANT: May I have the last part of that answer read
13 back?

14 (The record was read by the reporter.)

15 THE WITNESS: May I correct that, sir?

16 It may be better to say that he would then leave it to me
17 to identify the remaining people that might have to come
18 through.

19 Q. (By Mr. Roche) Now, after Mr. Cornell left the area,
20 were you picketing by yourself?

21 A. Yes, sir.

22 Q. And did anyone approach you between the time Mr. Cornell
23 left and the time Mr. Parker and Mr. Hanger appeared?

24 A. What, sir?

25 Q. Did any people come to you to try to go into the plant

1 between the time that Cornell left the area and the time that
2 Mr. Parker and Mr. Hanger came?

3 A. I don't believe so.

4 Q. Now, when Mr. Parker and Mr. Hanger approached you, what
5 did you do, Mr. Beck?

6 A. I stopped them and asked them for identification and
7 where they were going.

8 Q. And did you receive any answer?

9 A. I got a negative answer. Putting in words, there was an
10 answer, but it was a brush-off answer. They indicated that
11 it was none of my business, that they were going to go into
12 the plant.

13 Q. Who was doing the talking, Mr. Parker or Mr. Hanger, or
14 both?

15 A. The shorter man is Mr. Parker.

16 Q. Did you place your hand on Mr. Parker?

17 A. Yes.

18 Q. And where did you place your hand?

19 A. On the upper part of his chest, or near his shoulder, I
20 suppose.

21 Q. And which hand did you place on him?

22 A. It would be my left hand.

23 Q. Did Mr. Parker say or do anything about the fact that you
24 had your hand on his chest?

25 A. Yes, sir, he told me to get my hand off of him. In doing

1 that, in very short order he told me --

2 MR. PLANT: Just a moment. The question has been
3 answered.

4 Q. (By Mr. Roche) Did he do anything about the fact that
5 your hand was on his chest?

6 A. Yes. He brushed it off.

7 Q. And after he brushed your hand what happened?

8 A. He brushed it off and asked me my name, and when he did
9 that someone came in from my right side. I felt him go by,
10 and I pushed off to the side a little, and a man came in low
11 and struck Mr. Parker into the midsection.

12 Q. And did you know at the time who the man was who struck
13 Mr. Parker?

14 A. At the time I did not, sir.

15 Q. Do you know now who it was?

16 A. I do, sir.

17 Q. And who was it?

18 A. Mr. Groulx.

19 Q. That is Mr. Richard Groulx?

20 A. Dick Groulx, as I have heard him called.

21 Q. Did you know who Mr. Groulx was at the time?

22 A. I did not, sir.

23 Q. Had you ever seen him before?

24 A. No.

25 Q. During your discussion with Mr. Parker, did you at any

1 time signal with your head for someone else to come over to
2 the area where you were standing?

3 A. No, sir, I did not.

4 Q. Did you signal with your hand for anyone to come over?

5 A. I made no signals, sir.

6 Q. As a picket, did you have any pre-arranged signal for
7 your coworkers or costrikers to come if you needed help?

8 A. We have no signals, sir.

9 Q. How many times did you see Mr. Groulx strike Mr. Parker?

10 A. I observed one punch into the midsection.

11 Q. Did you know whether that was a right or a left-hand
12 punch?

13 A. I would say that it was a right-hand punch. I wouldn't
14 be able at this time, except that I do know that he struck him
15 with the hand. I could not definitely say that it was the
16 right or the left.

17 Q. Now, after Mr. Groulx struck Mr. Parker what happened
18 then? What did you do or see?

19 A. After Mr. Groulx struck Parker, my attention was drawn
20 to across the street where I observed Mr. Arca approaching
21 the area.

22 Q. And where was Mr. Arca coming from?

23 A. He was coming from the southeast corner of 64th and
24 Overland.

25 Q. Did you watch Mr. Arca as he approached the group where

1 you were?

2 A. I did, sir.

3 Q. And tell us in your own words what happened then, as Mr.
4 Arca was walking toward the group.

5 A. Mr. Arca came directly into the scuffle, and he came in
6 from the back, Mr. Hanger facing away from him toward the
7 west, Arca coming toward the west. He reached around his body
8 and grabbed Parker and pinned Parker's arms to his side.

9 TRIAL EXAMINER: Who pinned Mr. Parker's arms?

10 THE WITNESS: Mr. Arca pinned Mr. Hanger's arms to his
11 side.

12 Q. (By Mr. Roche) And then what happened?

13 A. The Emeryville Police Officers came in and took the man,
14 away.

15 Q. Did you have Mr. Arca in your observation from the time
16 that he approached the group until the time that he was taken
17 into custody by the police?

18 A. I did all the time, yes sir.

19 Q. Did Mr. Arca at any time strike Mr. Hanger?

20 A. He did not, sir.

21 Q. Did Mr. Arca at any time strike Mr. Parker?

22 A. He did not, sir.

23 Q. Did Mr. Arca at any time strike anyone in that group?

24 A. He did not, sir.

25 Q. By the time that Mr. Arca came over to the group, how

1 many people were present, approximately?

2 A. There were approximately 30 people. It could be 30
3 people.

4 Q. And do you know where they came from?

5 A. They came from the -- the gathering of people generally
6 was on the north side of the street near the heater we had
7 there for a trash can.

8 Q. There was a brazier there?

9 A. Yes, sir, in that area.

10 Q. Now, Mr. Beck, you testified that you asked Parker and
11 Hanger who they were and what their business was; is that
12 correct?

13 MR. PLANT: Objected to as leading.

14 MR. ROCHE: I will withdraw the question.

15 Q. (By Mr. Roche) In reply to your questions, did either
16 Mr. Parker or Mr. Hanger identify himself?

17 A. They did not identify themselves.

18 Q. Did either Mr. Parker or Mr. Hanger indicate what his
19 business was in the plant?

20 A. They did not.

21 Q. Did either Mr. Parker or Mr. Hanger indicate that he was
22 an attorney for the Fibreboard Corporation?

23 A. They did not, sir.

24 Q. Now, Mr. Beck, if Hanger or Parker, or both of them, had
25 identified themselves as company attorneys would you have

1 passed them into the plant?

2 MR. PLANT: Objected to as being immaterial.

3 TRIAL EXAMINER: Sustained.

4 MR. PLANT: It doesn't matter who they were.

5 Q. (By Mr. Roche) Mr. Beck, in the course of your activity,
6 as a picket what did you do, what was your practice when a
7 salesman approached the plant or approached the picket line?

8 MR. PLANT: Objected to as immaterial.

9 TRIAL EXAMINER: Sustained.

10 Q. (By Mr. Roche) While you were performing picket duty at
11 Fibreboard, Mr. Beck, were you ever approached by people
12 wearing business suits?

13 A. Yes, sir.

14 Q. And what did you do on those occasions?

15 MR. PLANT: Objected to as immaterial.

16 TRIAL EXAMINER: Sustained.

17 MR. PLANT: Except as it relates to this specific occa-
18 sion.

19 TRIAL EXAMINER: Sustained.

20 Q. (By Mr. Roche) When you were on picket duty at the
21 Fibreboard plant, Mr. Beck, did you ask for identification of
22 any person who was trying to go into the plant?

23 A. We had occasions to, yes.

24 MR. ROCHE: No further questions.

25 MR. LEFF: No questions.

CROSS-EXAMINATION

1
2 Q. (By Mr. Plant) Mr. Beck, let me call your attention to
3 a little map which is in evidence here.

4 I am going to show you Respondent's Exhibit No. 13, Mr.
5 Beck. Do you want to look at it a minute and get the layout
6 in mind?

7 You will note that it shows Overland Avenue, 64th Street,
8 and what I assume are railroad tracks.

9 A. It appears to be all right to me, sir.

10 Q. Now, when you first saw Mr. Parker and Mr. Hanger, where
11 were they?

12 A. My first observations of Mr. Parker and Hanger was near
13 63rd and Overland.

14 Q. In other words, they were in the area of 63rd Street and
15 Overland?

16 A. That is right, sir.

17 Q. Are there any sidewalks on Overland?

18 A. No.

19 Q. Just streets?

20 A. Yes.

21 Q. So they were in the street?

22 A. No, they were not actually in the street, sir. They were
23 following down the side of the railroad track.

24 Q. I see. Walking along the side of the street by the
25 railroad track.

- 1 A. Yes, sir.
- 2 Q. And they were headed in what direction?
- 3 A. They were headed in the direction of 64th Street.
- 4 Q. Which would be north.
- 5 A. North, sir.
- 6 Q. Now, when you first saw them where were you?
- 7 A. I was stationed at the south -- at this part right here,
- 8 which would be the southwest corner of 64th Street.
- 9 Q. At the southwest corner?
- 10 A. At the entrance to the Fibreboard Products.
- 11 Q. Of 64th Street and Overland?
- 12 A. And Overland, yes, sir.
- 13 Q. Was there some sort of a sign in the area where you were
- 14 standing at that time?
- 15 A. Well, we did have our lockout sign there, yes.
- 16 Q. Were you standing near that sign; is that it?
- 17 A. I don't necessarily believe that I was right next to it,
- 18 no. I would probably be in a little different --
- 19 Q. A few feet away?
- 20 A. Pardon?
- 21 Q. A few feet away?
- 22 A. Yes.
- 23 Q. Now, when you saw Mr. Parker and Mr. Hanger approaching
- 24 did you notice whether they were carrying anything?
- 25 A. Yes, sir, they were carrying a briefcase.

1 Q. What was Mr. Parker carrying, do you recall?

2 A. It was not a briefcase, as such. It was one of those
3 portfolio type of carriers.

4 Q. And what was Mr. Hanger carrying?

5 A. Mr. Hanger was carrying a more defined type of a brief-
6 case.

7 Q. Were they dressed in business suits?

8 A. They were, sir.

9 Q. Now, at what point was it that you confronted Mr. Parker?

10 A. I confronted Mr. Parker as he made a turn as if to go
11 into the entrance of Fibreboard Products.

12 Q. In other words where he reached the point where 64th
13 Street goes on into the plant; is that it?

14 A. That would be right, sir.

15 Q. Were Mr. Hanger and Mr. Parker walking side by side, or
16 were they one behind the other to some extent?

17 A. Coming down the street?

18 Q. Well, when you confronted them.

19 A. When I confronted them, Mr. Parker was in the lead.

20 Q. And will you just describe exactly now, when you con-
21 fronted them what you did; I take it that you put your hand
22 on Mr. Parker's chest.

23 A. I don't believe that I necessarily put my hand on him
24 the first time he came by, no. I am sure that the first time
25 I questioned him. I just simply asked the question who they

1 were and where they were going.

2 Q. Did you stand in front of him so as to bring him to a
3 stop?

4 A. More than likely I did, yes, sir.

5 Q. And you asked him what? What did you say to him?

6 A. I believe I asked him his name. I asked him their name
7 and what they were doing, or what they wanted.

8 Q. You asked his name?

9 A. I asked his name.

10 Q. Did Mr. Hanger say anything?

11 A. Mr. Hanger did not.

12 Q. Did Mr. Parker say anything?

13 A. He inferred to me that it was none of my business.

14 Q. I am not asking you what he inferred. I am asking you
15 what he said.

16 A. He said it was none of my business, that they were going
17 into the plant.

18 Q. Did he tell you that they had business in the plant?

19 A. No, sir.

20 Q. He didn't mention that?

21 A. He did not, sir.

22 Q. Now, when he said that what did you do?

23 A. When he said that?

24 Q. Yes.

25 A. What did I do?

1 Q. Yes. •

2 A. I again asked him who he was and what he wanted.

3 Q. And what did he say?

4 A. I don't know as he answered that at all. I don't recall
5 that he answered that one.

6 Q. Well, what point was it that you put your hand on his
7 chest?

8 A. When he continued, when he took off and made another
9 attempt to go on past me, then I raised my hand and I said,
10 "Now, wait a minute, who are you and what do you want?"

11 Q. And you placed your hand on his chest at that point?

12 A. Yes, sir.

13 Q. And you said again, "Now, who are you and what do you
14 want"; is that it?

15 A. Yes.

16 Q. And what did he say? .

17 A. He told me to get my hand off of him, and what was my
18 name. He inquired my name.

19 At that time was when he took out his portfolio — he
20 took out a pad of paper out of his portfolio and was going to
21 write down some information as to what my answer would be,
22 when Dick Groulx came in and struck him.

23 Q. Now, when he took that pad of paper out of his portfolio,
24 what did he do with his portfolio?

25 A. He had it in his arms as kind of a writing pad. He had

1 his portfolio in his arms. He pulled out his pad and laid it
2 on there and was making a motion -- I wouldn't say that he
3 had his pen yet or not. He may not have had his pencil. He
4 was going through the motions of doing that when Groulx came
5 in on him.

6 Q. When Groulx came in on him?

7 A. Yes, sir.

8 Q. Now, was there a brazier made out of an old drum on that
9 corner in that area?

10 A. Yes, sir.

11 Q. Will you point out on the exhibit, Respondent's Exhibit.
12 13, where that was?

13 A. The brazier was about where you have it marked on there.

14 Q. In other words, it was the point indicated by the arrow
15 which says 50-gallon drum brazier?

16 A. Yes, sir.

17 Q. And you mentioned a group of perhaps 30 men being there.
18 Where were they standing?

19 A. They were congregated around that particular area where
20 the drum is located.

21 Q. At what point did those men come over to where you were,
22 talking to Mr. Parker?

23 A. I didn't observe them coming over at any time. However,
24 they were there. I didn't observe the time when they did
25 come.

1 Q. You don't know when they came?

2 A. I don't know, sir.

3 Q. Were they standing around you and Mr. Parker at the time
4 that Mr. Groulx entered the act?

5 A. Yes, sir.

6 Q. Now, when Mr. Groulx hit Mr. Parker -- let me withdraw
7 that.

8 How close were these men to you? Were they in a circle
9 or a semi-circle, or what?

10 A. What men, sir?

11 Q. The men that came over from the brazier.

12 A. They were in close range. Do you want me to give you
13 the diameter of the site?

14 Q. Give me approximately how far away they were from you
15 and Mr. Parker.

16 A. Five feet, five or six feet.

17 Q. Now, when Mr. Groulx hit Mr. Parker what did you do?

18 A. When Mr. Groulx hit Mr. Parker what did I do?

19 Q. Yes, what did you do?

20 A. When Mr. Groulx went in and struck Mr. Parker I was
21 shuffled to the rear, and I was crowded out of my particular
22 position. I was behind the group more than I was right on
23 top of it.

24 Q. How did you get behind the group?

25 A. The shuffling of the men to get in there to, I guess,

1 get a better look.

2 Q. Now, while this was going on, and your conversation with
3 Mr. Parker was going on, what was Mr. Hanger doing?

4 A. Will you give it to me again?

5 Q. While you were talking with Mr. Parker what was Mr.
6 Hanger doing?

7 A. When I was talking with Mr. Parker what was Mr. Hanger
8 doing?

9 Q. Yes.

10 A. Mr. Hanger was just in behind. He was just standing
11 there in behind Mr. Parker.

12 Q. Did he have his briefcase in his hand?

13 A. Yes, sir.

14 Q. Which hand?

15 A. His left, sir — excuse me. May I change that?

16 It would be on my left. It would be his right hand, sir.

17 Q. When Mr. Groulx hit Mr. Parker you backed away, is that
18 it?

19 A. When Mr. Groulx hit Mr. Parker I backed away?

20 Q. Yes.

21 A. I didn't back away. I was displaced from my spot where
22 I was. I didn't myself back away, no.

23 Q. Well, you were standing right directly in front of Mr.
24 Parker?

25 A. Right, sir.

1 Q. Who displaced you?

2 A. When Mr. Groulx came through striking the blow to Mr.
3 Parker's midsection, at that time there was, because of the
4 fact that Mr. Parker was hit in the stomach, doubled up, he
5 was driven back to a couple of steps; that increased the
6 distance between Mr. Parker and myself.

7 Q. Well, who came in between you and Mr. Parker?

8 A. People from the sidelines.

9 Q. They crowded up that close?

10 A. Well, they crowded me out of my particular spot, yes,
11 sir.

12 Q. Now, when Mr. Groulx hit Mr. Parker what did Mr. Hanger
13 do?

14 A. I don't recall as to Mr. Hanger's particular action. He
15 made efforts, the -- he made some effort to go to his assis-
16 tance probably. What his intentions were, there was no move-
17 ment on his part. I wouldn't be able to say what Mr. Hanger
18 intended to do, no.

19 Q. Did he hit anyone?

20 A. I didn't see Mr. Hanger hit anybody, no, sir.

21 Q. Did you see him put his arms around Mr. Groulx to
22 restrain him?

23 A. I did not, sir.

24 Q. You were facing in that direction, were you not?

25 A. Yes, I was, sir.

1 Q. Would you say that that didn't happen, or simply that you
2 didn't observe?

3 A. I didn't see it. I can't say that it couldn't happen.
4 I didn't see it.

5 Q. Now, did you at any time see Mr. Hanger waving his brief-
6 case around in the air?

7 A. It wasn't observant to me, no, sir.

8 Q. Did you see what he did with his briefcase after Mr.
9 Groulx struck Mr. Parker?

10 A. No, sir.

11 Q. Now, where was Mr. Arca when you first observed him on
12 this occasion?

13 A. Would you care for me to point it out on this map or
14 describe it?

15 Q. Well, first describe it and then we will point it out on
16 the map.

17 A. Mr. Arca was directly across the street at the eastern
18 side of Overland Street and 64th.

19 Q. About at the corner?

20 A. Around -- he would be on Overland Avenue around the cor-
21 ner at this point.

22 Q. That is he was on Overland Avenue at about its inter-
23 section with 64th; is that right?

24 A. I was with him on 64th Street, having turned the corner
25 at 64th, if that would help.

1 Q. And he was in an automobile, was he?

2 A. He came from that automobile that was there.

3 Q. And when he got out of the automobile where was the
4 automobile?

5 A. The automobile was at the corner and it had made a turn
6 on Overland Street.

7 Q. In other words, it had just turned from Overland to 64th
8 Street?

9 A. It had just turned from 64th onto Overland.

10 Q. And on which side of the street was it?

11 A. It was on the southeast side, right here.

12 Q. It was on the east side of Overland?

13 A. East side of Overland, yes, sir.

14 Q. And it was heading south?

15 A. The car would be heading south, sir.

16 Q. Now, did you observe Mr. Arca get out of the car?

17 A. I first observed Mr. Arca in close enough to that car
18 that he would have come out of there. I did not see Mr. Arca
19 step out of the car, no, sir.

20 Q. You saw him coming from that direction; is that it?

21 A. He was close enough to that car that I would say that he
22 came out of that car.

23 Q. And at this time I take it that there was a pretty large
24 and closely packed group of men standing around Mr. Hanger
25 and Mr. Parker?

1 A. I don't say that that crowd was closely packed, no, sir.
2 There was a crowd there.

3 Q. Well, it was closely enough packed that it edged you out
4 of the way; is that right?

5 A. They were in on my side of the disturbance and on my
6 left there were people, yes, sir.

7 Q. What direction were you facing when you saw Mr. Arca?

8 A. I was facing east, sir.

9 Q. You were facing east?

10 A. East.

11 Q. On which side of this group of men were you?

12 A. I would be on to the south side of the group.

13 Q. Were there men inbetween you and Mr. Parker and Mr. Hange
14 at this point?

15 A. There may have been a couple.

16 Q. Now, will you just tell me again what you saw Mr. Arca
17 do when you first observed him coming from the direction of
18 that automobile after that?

19 A. I saw Mr. Arca approach from that automobile and headed
20 directly into that area.

21 Q. Into the group of men?

22 A. Pardon?

23 Q. Into the group of men?

24 A. Into that area where the scuffle was going on, yes, sir.

25 Q. How did he get through the men that were surrounding?

- 1 A. That area was open, sir.
- 2 Q. They made way for him, did they?
- 3 A. Pardon?
- 4 Q. Did they make way for him?
- 5 A. Did they make way for him?
- 6 Q. Make way for him.
- 7 A. I don't understand you.
- 8 Q. Did the men make a path for Mr. Arca to come there?
- 9 A. There was no path made for Mr. Arca. The space was there
- 10 all the time.
- 11 Q. Now, describe exactly what Mr. Arca did.
- 12 A. He came directly into that area and immediately went
- 13 astraddle with Mr. Hanger and pinned him.
- 14 Q. Mr. Hanger was standing up straight, was he, or in what
- 15 position was he?
- 16 A. He could have been in stopped position. I am sure he
- 17 wasn't standing straight up.
- 18 Q. Did he have his briefcase in his hands?
- 19 A. Yes, sir.
- 20 Q. He still had his briefcase in his hands?
- 21 A. I would say he had his briefcase in his hands, yes, sir.
- 22 Q. And it is your testimony that Mr. Arca pinned Mr.
- 23 Hanger's arms to his sides; is that it?
- 24 A. I am testifying that Mr. Arca pinned Mr. Hanger's arms
- 25 to his sides; is that what you said?

1 Q. Yes.

2 A. I have a little difficulty sometimes in hearing you if
3 you cover your mouth.

4 Q. I am sorry.

5 A. I didn't get you, sir.

6 Q. My question was, when Mr. Arca intervened, he wrapped
7 his arms around Mr. Hanger so as to pin Mr. Hanger's arms?

8 A. That is right, sir.

9 Q. In other words, Mr. Arca's arms went around Mr. Hanger's
10 arms and not beneath them.

11 A. Mr. Hanger's arms were at his side. Mr. Arca's arms
12 came around pinning his arms to his body, around Parker, yes,
13 sir.

14 Q. Around Hanger you mean.

15 A. Around -- pardon me, sir. Hanger.

16 Q. And so far as you observed Mr. Hanger was doing nothing?

17 A. I don't say that Mr. Hanger wasn't doing anything. He
18 wasn't fighting anybody, if that is what you are talking
19 about.

20 Q. Did Mr. Parker at any time call any names, call you any
21 names?

22 A. I don't know -- no, sir, he didn't call me any names.

23 Q. Did he call anybody any names?

24 A. Did Mr. Parker call anybody names? No, sir. What do
25 you mean by names, sir?

1 Q. Did he make any reference to, if you will pardon the
2 language, "fucking goon"?

3 A. That doesn't sound like anything I heard. In fact, if
4 you will allow me, sir, as far as any particular type of dis-
5 cussion, unless that person at that time -- I did not have a
6 hearing aid -- any particular discussion, if it was directed
7 to me personally I would get it.

8 If some discussion was directed to a different person I
9 may hear and get part of it, or pass it up. There was many
10 times that I will not get a conversation unless I am directly
11 spoken to.

12 Now, with my hearing aid, I can get more of it.

13 Q. What was your object in placing your hands on Mr. Parker's
14 chest?

15 A. It would be my observation that the purpose of that was
16 first intended as a gesture, "Now, wait a minute," and the
17 forward motion of Mr. Parker would engage his body to my
18 hand.

19 It wasn't a case of me grabbing or doing anything. It
20 would be a gesture of, "Wait a minute."

21 Q. Was it your purpose to stop him from entering the plant?

22 A. It was my purpose to stop him to ask for identification,
23 yes, sir.

24 Q. Why did you want his identification?

25 A. It was Mr. Cornell's agreement with Mr. Stumpf and myself

1 that people at that particular time entering the plant would
2 be necessary for Mr. Cornell's business at hand.

3 It was agreed by Mr. Cornell and Mr. Stumpf and myself
4 that there would be no production people or employees to the
5 plant. There would be no entrance of that type.

6 MR. PLANT: Well, now, Your Honor, I move to strike the
7 entire answer as being not responsive, and giving conclusion
8 of the witness.

9 THE WITNESS: I didn't mean that, sir.

10 MR. ROCHE: General Counsel believes that it was respon-
11 sive.

12 MR. PLANT: It was not responsive.

13 TRIAL EXAMINER: Motion denied.

14 Q. (By Mr. Plant) You are referring to this conversation
15 between you and Mr. Cornell that you have already testified
16 to?

17 A. You are referring to what?

18 Q. When you refer to an agreement between yourself and Mr.
19 Cornell, you were referring to this conversation with Mr.
20 Cornell that you have already testified to.

21 A. I am sorry, sir.

22 Q. You testified to a conversation you had with Mr. Cornell

23 A. Yes.

24 Q. Before Mr. Parker and Mr. Hanger arrived on the scene,
25 is that right?

1 A. The conversation between Mr. --

2 Q. Well, now, just a moment.. Let me ask my question.

3 A. I am sorry.

4 Q. When you referred to an agreement between yourself and
5 Mr. Cornell, did you refer to that conversation; is that it?

6 A. What conversation?

7 TRIAL EXAMINER: Do you understand the question?

8 THE WITNESS: I do not, sir.

9 MR. ROCHE: His answer has been misstated to him. The
10 witness testified to an agreement with Stumpf and Cornell.

11 TRIAL EXAMINER: Just a moment. Let's start all over
12 again.

13 THE WITNESS: I am sorry, sir. You have left me.

14 MR. PLANT: Let me rephrase the question and I will see
15 if I can't make it clear.

16 THE WITNESS: Yes, sir.

17 Q. (By Mr. Plant) You spoke of some agreement --

18 A. Yes, sir.

19 Q. -- regarding people entering the plant.

20 A. Yes, sir.

21 Q. And as I understand it you said that Mr. Cornell made
22 that agreement.

23 A. Yes, sir.

24 Q. Now, when you refer to Mr. Cornell making that agreement,
25 are you referring to what he said during the conversation you

1 Had with him before Mr. Hanger and Mr. Parker showed up?

2 A. Yes, sir.

3 Q. That is what you referred to as an agreement?

4 A. Yes, sir.

5 Q. Now, let me ask you again, was it your purpose in placing
6 your hand upon Mr. Parker's chest and standing there in front
7 of him to prevent him from entering the plant until you were
8 willing that he do so?

9 A. The purpose of my hand placed in that way was for indi-
10 cating that I was asking him to stop and let me know who he
11 was and what his business was, sir.

12 Q. And if his answer didn't satisfy you it was your purpose
13 to prevent him from entering the plant; is that it?

14 A. That is right, sir.

15 Q. Just as you had tried to prevent from Mr. Bradford from
16 coming down Hollis Street or, rather, 64th Street a couple of
17 days before?

18 A. No, sir, I would not connect that two instances of havin-
19 the same meaning at all, sir.

20 Q. Did Mr. Parker at any time tell you that he did have
21 business in the plant?

22 A. He did not, sir.

23 Q. Now, as I understand it, during this entire conversation
24 with Mr. Parker, Mr. Hanger said nothing?

25 A. As far as I am concerned he did not, sir.

1 MR. PLANT: I have no further questions.

2 REDIRECT EXAMINATION

3 Q. (By Mr. Roche) Mr. Beck, before Mr. Groulx struck Mr.
4 Parker, was there any physical contact between you and Groulx?

5 A. Prior to him striking him?

6 Q. Yes.

7 A. Yes.

8 Q. Would you describe what that contact was?

9 A. The placing of the hand.

10 Q. Now, I am asking you whether there was any physical con-
11 tact between you and Mr. Groulx before Mr. Groulx struck Mr.
12 Parker.

13 A. In the form of an argument?

14 Q. No. I just wondered whether you touched him or he
15 touched you.

16 A. I touched him.

17 Q. You touched who?

18 A. Mr. Parker.

19 Q. Agreed. Let's forget about Mr. Parker. I am asking
20 whether you touched Mr. Groulx or Mr. Groulx touched you
21 before Mr. Groulx struck Mr. Parker.

22 A. Excuse me, sir. I got the names mixed up. Mr. Groulx,
23 I did not touch him.

24 When he came from behind me, he pushed in to the side.
25 I felt him brush me on the side, and I was stationed directly

1 in front of Mr. Parker. The motion of putting me aside would
2 place him in position for striking a blow into Mr. Parker's
3 stomach.

4 Q. Now, how far were you displaced by Mr. Groulx's touch
5 or his brush, or whatever it was?

6 A. Possibly a foot or so.

7 Q. Were you wearing a hearing aid at the time of this inci-
8 dent back in August of 1959?

9 A. No, sir.

10 Q. Did you have a hearing impediment at that time?

11 A. Yes, sir.

12 Q. Now, on cross-examination you mentioned a conversation
13 you had with Mr. Cornell and Mr. Stumpf.

14 A. Yes, sir.

15 Q. When did that take place?

16 A. That took place prior to the entrance of the personnel
17 people.

18 Q. And would you tell us what was said in that conversation
19 between you and Mr. Cornell and Mr. Stumpf?

20 MR. PLANT: Objected to as asked and answered. It was
21 all gone into on direct.

22 TRIAL EXAMINER: Sustained.

23 MR. ROCHE: I beg your pardon, Mr. Trial Examiner.

24 TRIAL EXAMINER: Yes, I believe this is repetition.

25 MR. ROCHE: This witness was testifying on cross-examination.

1 to a conversation he had with Mr. Cornell. I am asking him
2 about a conversation he alluded to in his cross-examination
3 to a three-way conversation involving Stumpf, Cornell, and
4 Mr. Beck.

5 TRIAL EXAMINER: State your question again.

6 Q. (By Mr. Roche) Would you tell us the substance or the
7 gist of the conversation you had with Mr. Stumpf and Mr.
8 Cornell?

9 A. Mr. Stumpf and Mr. Cornell were in discussion of a pro-
10 cedure whereby Mr. Cornell could get his people into that
11 plant that morning.

12 He had business for them, and he wanted them in. The
13 discussion between Mr. Stumpf and Mr. Cornell was the conclu-
14 sion that that would be fine and dandy, provided --

15 MR. PLANT: Just a moment.

16 TRIAL EXAMINER: Go ahead.

17 MR. PLANT: I have no objection to the witness testifying
18 as to what was said, but I do object to his characterizing
19 what was said by the conclusion was or the result was.

20 THE WITNESS: Yes, sir.

21 Q. (By Mr. Roche) Just try to restrict yourself, Mr. Beck,
22 to the gist of what was said by Messrs. Stumpf, Cornell, and
23 yourself.

24 A. It is pretty hard to say it that way, but I will try.

25 Q. You have already mentioned the gist of what Mr. Cornell

1 said.

2 Did Mr. Stumpf have anything to say, any comment?

3 A. He agreed with Mr. Stumpf, with Mr. Cornell, that I
4 would help identify his people.

5 Q. Anything else said in that conversation that you recall?

6 A. Nothing that I recall.

7 Q. Anything said about production workers?

8 A. Yes.

9 Q. What was said about that?

10 TRIAL EXAMINER: He already testified to that. I can't
11 see anything to be gained by repeating things. Let's just
12 go over one thing once.

13 MR. ROCHE: I don't recall his mentioning it.

14 TRIAL EXAMINER: All right. Very well, go ahead.

15 Q. (By Mr. Roche) What was said about production workers?

16 A. That there would be no production workers allowed to go
17 through. It was agreed.

18 MR. ROCHE: No further questions.

19 RECROSS-EXAMINATION

20 Q. (By Mr. Plant) Well, now, just a moment, Mr. Beck. When
21 you say it was agreed, who said there would be no production
22 workers allowed to go through? Who said that?

23 A. Mr. Cornell and Mr. Stumpf.

24 Q. They both said, in chorus, there would be no production
25 workers allowed to go through?

1 A. It was agreed with Mr. Cornell.

2 Q. I don't want to know what was agreed. I want to know
3 what was said.

4 A. Well, that is a long time ago, sir.

5 Q. I know it is. That is one problem we have in this case.

6 A. If you are asking me what the words were, I will have to
7 deny knowledge.

8 Q. Isn't what was said in substance, this, that Mr. Stumpf
9 told Mr. Cornell that Mr. Stumpf was unwilling to let any
10 production workers in, and that Mr. Cornell said, "I am talk-
11 ing about my men, the clerical people. Mr. Beck, I will rely
12 on Mr. Beck to identify them."

13 Now, isn't that the substance of it?

14 A. That is good enough for me, sir.

15 MR. PLANT: All right.

16 TRIAL EXAMINER: Anything else?

17 MR. ROCHE: Nothing further from the General Counsel.

18 TRIAL EXAMINER: All right, we will recess until 2:00
19 o'clock.

20 (Witness excused.)

21 (Whereupon, at 12:00 o'clock noon, a recess was
22 taken until 2:00 o'clock p.m., the same day.)

23 - - -
24
25

AFTERNOON SESSION

2:00 p.m.

TRIAL EXAMINER SAEM: On the record.

MR. LEFF: Your Honor, something has come to my attention in connection with one of the earlier stipulations that I would like to modify.

However, as I stood up to speak I recall that Mr. Plant suggested that there would be prior discussion, so I will sit down and speak to Mr. Plant first, and then stand up again later.

MR. ROCHE: The General Counsel now calls Carl Olson.

TRIAL EXAMINER: Would you step forward, Mr. Olson, to the witness stand and be sworn?

Whereupon,

CARL OLSON

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Roche) You were formerly employed by the Fibreboard Corporation?

A. Yes.

Q. And as of July 31, 1959, how many years of service did you have with Fibreboard?

A. Thirty years and five months.

Q. How old are -- how old were you at that time?

A. Forty-eight years old.

Q. Did you have a vested interest in the retirement plan at that time?

A. No.

Q. And do you know what age you would have to be in order to get a vested interest?

A. I --

MR. PLANT: Objected to as calling for an opinion and conclusion of the witness on the retirement plan.

TRIAL EXAMINER: Overruled.

Q. (By Mr. Roche) How old would you have to be?

A. Fifty years old.

Q. Did you participate in the picketing that took place at Fibreboard's Emerville plant in August of 1959?

A. Yes, sir.

Q. Now, calling your attention to August 21, 1959, did you witness a collision between the truck of Dave Arca and automobile entering the plant?

A. I did not see the collision, but I heard it.

Q. About what time of the day was that?

A. I would say it was 7:00 or 7:15 about.

Q. Where were you at the time?

A. I was on the south side of 64th Street.

Q. Is there a sidewalk on 64th Street?

1 A. No, Sir.

2 Q. Were you at the extreme south side of the street, or
3 somewhere else?

4 A. Yes.

5 Q. How far away from the automobile were you when you heard
6 this sound?

7 A. About 20 feet.

8 Q. And what did you do at that time?

9 A. I had a bottle of paint in my pocket, and I took it out
10 of my pocket and tossed it at the car.

11 MR. PLANT: I didn't hear that.

12 MR. ROCHE: Would the reporter please read back the
13 answer?

14 TRIAL EXAMINER: Yes, Mr. Reporter, please do.

15 (The record was read by the reporter.)

16 Q. (By Mr. Roche) What kind of bottle was this?

17 A. It was a plastic bottle.

18 Q. About how large was it?

19 A. About three by four, three inches by four inches.

20 Q. Approximately how many ounces would it hold?

21 A. I would say about four.

22 Q. Did it have a cap on the bottle?

23 A. No cap. I had a paper plug in it, made of paper.

24 Q. What did this bottle contain?

25 A. Paint.

Q. And what color paint was it?

A. Yellow.

Q. And was it oil paint or some otherkind?

A. Oil paint.

Q. Where had you obtained this plastic bottle of paint?

A. At my home.

Q. And when did you get this at your home?

A. The same morning.

Q. And when you threw the plastic bottle at the car, did you hit the car?

A. No, sir.

Q. Where did the plastic bottle go when you threw it?

A. It hit under the car.

Q. Did you observe any of the paint on the car itself?

A. No, sir.

Q. Did you observe the paint anywhere else after you threw it?

A. After I saw some paint on the street.

Q. Was it the yellow paint from your bottle?

A. Yes.

Q. Did you throw anything else at that car on that occasion?

A. No, sir.

Q. Did you throw any other object at any time during the picketing of the Fibreboard plant?

A. No, sir.

1 TRIAL EXAMINER: Were you asked and, if not, I would like
2 you to tell me, where are you working at the present time?

3 THE WITNESS: Grove Valve and Regulator.

4 TRIAL EXAMINER: When was the last time that you worked
5 for Fibreboard?

6 THE WITNESS: July 31, 1959.

7 MR. ROCHE: I have no further questions.

8 MR. LEFF: No questions.

9 CROSS-EXAMINATION

10 Q. (By Mr. Plant) Mr. Olson, why did you arm yourself with
11 that bottle of paint that morning?

12 A. Well, it is hard to say. I guess I wanted to do some-
13 thing mean, I guess.

14 Q. In other words you had in mind doing what you did?

15 A. Yes.

16 Q. And you were standing about 20 feet from the car when
17 you threw it?

18 A. Yes, sir.

19 Q. And your aim was a little poor; is that it?

20 A. My intentions were good but my aim was poor, right.

21 Q. Did you see any rocks thrown that morning?

22 A. No, sir.

23 Q. So far as you knew nobody threw a rock?

24 A. I didn't see anyone throw a rock.

25 Q. Did you see anyone throw a piece of concrete at the

window of that car before it was overturned?

A. No, sir.

Q. When this crash occurred you weren't facing that direction?

A. I was facing north.

Q. You were facing north?

A. Yes.

Q. And you were on the south side of the street?

A. Yes.

Q. Well, how is it that you didn't see the crash? You were looking right toward it, weren't you?

A. I might have looked at the car coming down from College Street. I might have turned my head towards the east, I don't know.

Q. You saw no objects thrown at any of those cars?

A. No, sir.

MR. PLANT: No further questions.

REDIRECT EXAMINATION

Q. (By Mr. Roche) You indicated that you threw the plastic bottle at the car from a distance of about 20 feet; is that correct?

A. I would say 18 to 20 feet, yes.

Q. Were you aiming at any particular part of the car?

A. Yes. I aimed low because I didn't want to hurt anyone.

MR. ROCHE: No further questions.

RECROSS-EXAMINATION

1
2 Q. (By Mr. Plant) Just one minute, please.

3 The car was on its side when you threw the bottle?

4 A. No, it was upright.

5 Q. It was still upright?

6 A. Yes.

7 Q. And they were starting to rock it, were they, tip it over?

8 A. Yes.

9 Q. Who was in that group that tipped it over? Did you
10 recognize anyone?

11 A. No, I didn't, because they were on the other side of the
12 car.

13 Q. There wasn't anybody on your side?

14 A. Yes, two people were on my side.

15 Q. Who were they?

16 A. Warren Jackson and Bob Hughes.

17 Q. You didn't see who the people on the other side were?

18 A. I didn't pay any attention. I didn't see.

19 Q. By the way, the windows of the car, when you threw that
20 bottle of paint, were they closed or were they open?

21 A. I never noticed.

22 MR. PLANT: No further questions.

23 FURTHER REDIRECT EXAMINATION

24 Q. (By Mr. Roche) You mentioned that Warren Jackson and
25 Bob Hughes were on the same side of the car as you were; is

1 that right?

2 A. Yes.

3 Q. Were they close by where you were standing, on the south
4 side of 64th Street?

5 A. Yes.

6 Q. Did either Warren Jackson or Bob Hughes participate in
7 tipping the car?

8 A. No.

9 MR. ROCHE: No further questions.

10 TRIAL EXAMINER: You are excused. Thank you.

11 (Witness excused.)

12 MR. ROCHE: I call Mr. Arca, please.

13 Whereupon,

14 DAVID ARCA

15 was called as a witness by and on behalf of the General
16 Counsel and, having been first duly sworn, was examined and
17 testified as follows:

18 DIRECT EXAMINATION

19 Q. (By Mr. Roche). You were employed by Fibreboard Corpora-
20 tion, Mr. Arca?

21 A. Pardon?

22 Q. You have been employed by Fibreboard Corporation?

23 A. Yes, I have been.

24 Q. And as of July 31, 1959, how many years of service did
25 you have with Fibreboard?

1 A. Sixteen and a half.

2 Q. How old were you at the time?

3 A. Forty-three.

4 Q. Do you know how much more service you would have required
5 in order to have a vested pension right?

6 A. Yes --

7 MR. PLANT: Objected to as calling for an opinion and
8 conclusion of the witness, and as being secondary evidence
9 as to the pension plan.

10 TRIAL EXAMINER: Overruled.

11 Q. (By Mr. Roche) How old would you have to be?

12 A. Fifty.

13 Q. Are you an officer of Local 1304?

14 A. Yes.

15 Q. What office do you hold?

16 A. Recording secretary, sir.

17 Q. How long have you held that office?

18 A. Since 1954.

19 Q. Have you been a steward for Local 1304 at the Fibreboard
20 plant?

21 A. Yes.

22 Q. When was that?

23 A. 1957 to 1958.

24 Q. Have you served on the executive board of Local 1304?

25 A. Yes.

Q. When was that?

A. 1952 to -- since 1952 on.

Q. Have you served on the Local 1304 negotiating committee with Fibreboard?

A. Yes.

Q. During what period?

A. 1955 on.

Q. Up to the present time?

A. Yes.

Q. It has been stipulated in this proceeding, Mr. Arca, that you went on a leave of absence starting on July 13, 1959.

Now, prior to July 13, 1959, where were you working in the Fibreboard plant, what department?

A. Paint department.

Q. And were you officially assigned to that department?

A. Yes.

Q. Were you officially assigned to any other department prior to July 31, 1959?

A. Yes.

Q. What other department?

A. The main shop.

Q. And when were you assigned there?

A. June 1958.

Q. And who made the assignment?

A. Mr. Maffey.

1 Q. Now, after June 1958, what percentage or what proportion
2 of your work was performed in the paint shop?

3 A. About 90 percent.

4 Q. Did you work alone in the paint shop, or did you have
5 assistance?

6 A. I worked alone until the work required help. Then I got
7 help from the shop.

8 Q. Would this help consist of machinists, mechanics?

9 A. Machinists, pipefitters, riggers, whatever was required.

10 Q. When were you scheduled to return from your leave of
11 absence in 1959?

12 A. August 3rd.

13 Q. Did you participate in the picketing activities at
14 Fibreboard's Emeryville plant in August of 1959?

15 A. Yes.

16 Q. Calling your attention to August 19, 1959, were you pre-
17 sent on that date?

18 A. Yes.

19 Q. And where were you?

20 A. At what time?

21 Q. Well, say in the morning, the morning of August 19th.

22 A. On 64th Street.

23 Q. Did you have your truck with you?

24 A. Yes.

25 Q. What kind of a truck is it, Mr. Arca?

1 A. A 1946 Ford pickup.

2 Q. What color is the Ford pickup?

3 A. Telephone Company green.

4 Q. Was the truck originally owned by the Telephone Company?

5 A. Yes.

6 Q. Now, on that date, on August 19th, did you observe a
7 series of automobiles coming along 64th Street toward the
8 Fibreboard plant?

9 A. Yes.

10 Q. Approximately what time was that?

11 A. Approximately 7:00 a.m.

12 Q. All right. Now, would you tell us what you did after
13 you observed this line of cars heading towards the plant?

14 A. I got in my pickup, and I drove to the center of the
15 street and stopped.

16 Q. And when you stopped, how far were you from the first
17 car in the line?

18 A. Several car lengths.

19 Q. And after you stopped your truck what did you do?

20 A. I got out and lifted the hood.

21 Q. And then what happened?

22 A. A policeman came over and told me to get that out of
23 there, and then I got back in and drove it to the other side
24 of the street.

25 Q. Now, did you see a Mr. Lincoln Beck picketing on that

1 day, that same day?

2 A. Yes.

3 Q. What time did you see Mr. Beck?

4 A. About 10:00 o'clock a.m.

5 Q. Where was Mr. Beck?

6 A. On the picket line.

7 Q. At what location?

8 A. 64th and Overland.

9 Q. Was he engaged in picketing at that time?

10 A. Yes.

11 Q. And where were you at the time you saw Mr. Beck?

12 A. I was on Overland Street.

13 Q. And what were you doing?

14 A. Just standing..

15 Q. What happened after that?

16 A. Jack Giffin drove down 64th Street and asked for someone
17 to help him on Hollis Street, and I volunteered to help him.

18 Q. Then what happened?

19 A. I got in his car, and we started to drive to Hollis
20 Street.

21 Q. What happened after that?

22 A. Well, we made a left turn from 64th into Overland, and
23 I saw some activity or commotion on the picket line, and saw
24 two large individuals who seemed to be assaulting our pickets,
25 and I asked Jack to stop the car --

MR. PLANT: I move that the words "who seemed to be assaulting our pickets" as being a conclusion and a characterization of what he saw.

MR. ROCHE: I will join Mr. Plant in that.

Q. (By Mr. Roche) Tell us what you saw these two individuals doing.

A. Well, you have to rephrase it, because that is what it appeared to me.

I looked in that direction, and I saw two large individuals. There seemed to be a lot of commotion, and I saw a briefcase waving, and I asked Jack to stop, and I ran over to where the people were, and I threw my arms around one of the individuals.

Q. Which of the two individuals did you put your arms around?

A. The larger one.

Q. Did you know who he was at that time?

A. No.

Q. Did you later find out who he was?

A. Yes.

Q. Who was he?

A. He was a company lawyer.

Q. And his name?

A. Mr. Hanger.

Q. Did you, other than putting your arms around Mr. Hanger to pin his arms, did you --

1 MR. PLANT: Just a moment. The witness hasn't testified
2 that he pinned his arms.

3 TRIAL EXAMINER: What happened next?

4 Q. (By Mr. Roche) What happened next?

5 A. After what?

6 Q. You were approaching this group where the commotion was,
7 and --

8 TRIAL EXAMINER: You have been in the courtroom here,
9 Mr. Witness, weren't you, when Mr. Beck was testifying?

10 THE WITNESS: Yes.

11 TRIAL EXAMINER: That is the incident in which they are
12 interested.

13 Now, you were in your truck, and you saw someone waving
14 around a briefcase; is that it?

15 THE WITNESS: Yes.

16 TRIAL EXAMINER: All right.

17 THE WITNESS: But I wasn't in my truck. I was in another
18 one, in another car.

19 TRIAL EXAMINER: Well, whatever it was. I assume you got
20 out of the truck; right?

21 THE WITNESS: Yes.

22 TRIAL EXAMINER: You told me that you saw this and that.
23 I want you to tell us now everything that you saw and every-
24 thing you heard from that point on, and take it step by step,
25 please.

THE WITNESS: When I got out of the car and ran over to the picket line where the commotion was, and I threw my arms around the larger of the two individuals.

He tried to get away. He swung me around, and the policeman put his arms on my shoulder, and I let him go.

Q. (By Mr. Roche) How did you put your arms around Mr. Hanger?

A. I just wrapped them around.

Q. Did you pin his arms in doing so?

A. Yes.

Q. Did he still have his briefcase in his hand?

A. Yes.

Q. Did you strike Mr. Hanger with your fist?

A. No.

Q. Did you strike Mr. Hanger in any way?

A. No.

Q. Did you strike Mr. Parker in any way?

A. No.

Q. Did you see Mr. Parker struck?

A. No.

Q. Did you see anyone strike Mr. Hanger?

A. No.

Q. Now, calling your attention to August 21, 1959, were you present at the picketing location on that date?

A. Yes.

1 Q. And did you observe a caravan of cars heading west on
2 64th Street?

3 A. Yes.

4 Q. About what time was that?

5 A. 7:00 a.m.

6 Q. And where were you when you observed the caravan?

7 A. Overland and 64th.

8 Q. Did you have your truck with you at that time?

9 A. Yes.

10 Q. Now, would you tell us what happened after you saw the
11 caravan? What did you do?

12 A. I got in my truck. I drove up 64th, which would be east,
13 and approximately one-third or one-fourth the distance up the
14 block I stopped at the left center, which would be in their
15 line of travel.

16 Q. And then what happened?

17 A. The first car drove around my truck to my left, his
18 right, and went into the plant.

19 I then moved my truck to eliminate the space between my
20 truck and the second car, and I stopped about one-third car
21 length from the second car, and stopped my truck.

22 Q. Did you turn off your engine?

23 A. No.

24 Q. Did you put on the hand brake?

25 A. No.

Q. Did you have the foot brake engaged?

A. Yes.

Q. What happened then?

A. The second car started up and hit the front end of my truck.

Q. What happened then?

A. I got out of my truck to argue with them.

Q. Tell us what happened after that?

A. Some people began to rock the car, and someone said to get my truck out of there, so I backed to the south side of 64th Street.

Q. Did you observe the car being tipped over on its side?

A. No.

Q. After you backed your truck, did you observe the car at all?

A. The car was on its side.

Q. Excuse me. The car was on its side?

A. Yes.

Q. Now, after the two cars -- after your truck and the car collided, was your engine still running?

A. Yes.

Q. Do you know whether the engine of the car was still running?

A. I don't believe it was.

Q. Do you know that it wasn't?

1 A. I don't know for sure.

2 Q. Did you have any prior arrangement with other people who
3 would stop the caravan of cars so that they could tip the car
4 over?

5 A. No.

6 MR. PLANT: Objected to as immaterial.

7 TRIAL EXAMINER: Overruled.

8 Q. (By Mr. Roche) What was the purpose in blocking or
9 stopping the caravan of cars?

10 A. Which one?

11 Q. Well, let's take August 19th first, the incident where
12 you stopped the car in the middle of the road.

13 A. I wanted to ask them now not to go into the plant.

14 Q. What was your purpose in stopping the caravan of cars
15 or attempting to stop them on the 21st?

16 A. I was hoping we would have the same success.

17 Q. The same success as what?

18 A. As the 19th incident. On the 19th they didn't go into
19 the plant.

20 Q. After you got your car away from the caravan on the 19th,
21 did you talk to the drivers of these cars?

22 A. Some of the people talked to them. I had to move my
23 car. The policeman on the -- he ordered me out.

24 Q. Did the caravan of cars enter the plant on the 19th?

25 A. On the 19th?

Q. Yes.

1 A. No, not on the 19th. On the 21st.

2 Q. On the 19th did any of the cars in the caravan go into
3 the plant?

4 A. No.

5 Q. On the 21st did all of the cars go into the plant?

6 A. All the cars except the second car.

7 Q. That was the car that was tipped?

8 A. But those people walked in later.

9 Q. Were you present during the 1957 negotiations between
10 Local 1304 and Fibreboard?

11 A. Yes.

12 Q. And did these negotiations include discussion of the
13 retirement plan?

14 A. Yes.

15 Q. What was the outcome of the discussions?

16 MR. PLANT: Objected to as calling for an opinion and
17 conclusion of the witness.

18 MR. ROCHE: The witness was present.

19 MR. PLANT: I don't care whether he was present or not.
20 To ask him what was said is one thing -- or to ask him to
21 identify an agreement reached is one thing, but to ask him
22 what was the outcome is another thing.

23 MR. ROCHE: I will rephrase it.

24 Q. (By Mr. Roche) Mr. Arca, what discussion took place at
25 the 1957 negotiations with respect to a retirement plan?

1 A. We discussed when it would go into effect and how it would
2 affect 1304 members.

3 Q. What was said about the retirement plan and when it would
4 go into effect?

5 MR. PLANT: Objected to as calling for secondary evidence
6 or parol evidence.

7 The plan is in evidence.

8 TRIAL EXAMINER: Overruled.

9 Q. (By Mr. Roche) What was said about the date it would go
10 into effect?

11 A. The 1st of January, 1958.

12 Q. What was said about how the plan would affect Local 1304
13 members?

14 A. Those members —

15 MR. PLANT: Objection.

16 TRIAL EXAMINER: Overruled.

17 THE WITNESS: — are members who were over 60 years of
18 age who would have five years from January 1958, before they
19 would be compelled to retire.

20 TRIAL EXAMINER: Is that in the contract?

21 MR. PLANT: No, Your Honor. It reads differently.

22 TRIAL EXAMINER: Well, I didn't know what this was leading
23 up to.

24 MR. ROCHE: Well, Your Honor, the contract does have two
25 clauses which are applicable, Your Honor, and I have a

1 notation on them.

2 On page 17 -- excuse me. Paragraph 17 on page 32.

3 TRIAL EXAMINER: This is the --

4 MR. ROCHE: Fibreboard retirement plan.

5 TRIAL EXAMINER: Page 17?

6 MR. ROCHE: No, page 32, paragraph 17.

7 TRIAL EXAMINER: Yes.

8 MR. ROCHE: Also on page 33, paragraph 13 -- excuse me.

9 Paragraph 18.

10 Now, these sections of the Fibreboard retirement plan
11 provide for deferred retirement in certain instances. The
12 plan doesn't make any attempt to cover all of the possible
13 instances where deferred retirement would be appropriate.

14 This witness is testifying to a particular type of
15 deferred retirement which was discussed at the negotiations,
16 and applying to Local 1304 members who were over 60 years of
17 age.

18 MR. PLANT: There is a clause in the contract dealing
19 specifically with that situation.

20 TRIAL EXAMINER: Point it out to me, please.

21 MR. PLANT: Yes.

22 It will be found in Section 17, and let me get the specific
23 subdivision here.

24 Paragraph (b).

25 TRIAL EXAMINER: Paragraph (b)?

1 MR. PLANT: Yes, Section 17, on page 32.

2 TRIAL EXAMINER: All right.

3 Let me ask you this. Let us suppose a person did not
4 yet attain the age of 65 but had attained the age of 60 as of
5 September 1, 1945.

6 What then would be the normal retirement date?

7 MR. PLANT: It says, "The normal retirement date shall
8 be the first day of any calendar month elected by the parti-
9 cipant following the attainment of age 65, but not later than
10 the first day of the calendar month next following the
11 attainment of the fifth birthday subsequent to September 1,
12 1945."

13 TRIAL EXAMINER: Give me a specific example.

14 MR. PLANT: Well, you have got several of them in the
15 record, Your Honor. Let's see here.

16 TRIAL EXAMINER: I am trying to visualize this in terms
17 of specific dates.

18 We will take a hypothetical date. Frankly, I suppose
19 if I sat down here and studied it for some time I know I
20 would figure it out, but I want to see how this works.

21 MR. PLANT: Bear with me one second, please.

22 You take Mr. Florin Bennett. Mr. Florin Bennett's birth-
23 day was -- let me see here just one second -- November 10,
24 1894.

25 TRIAL EXAMINER: 1894?

1 MR. PLANT: Yes.

2 Now, according to the way we read this plan, his com-
3 pulsory retirement date -- just one second here now until I
4 find him -- was December 1, 1962.

5 Now, that was the first of the month following his fifth
6 birthday after September 1, 1945 -- I mean January 1, 1958.

7 In other words, I overlooked point out to Your Honor
8 subparagraph -- where does it refer to the unit eligibility
9 date? Oh, I see.

10 If you will read (c) of Section 17, on page 32, it says,
11 "For a member eligible to participate in the plan under
12 Section 6(d), the normal retirement date shall be determined
13 under the foregoing subsections of this Section 17 substituting
14 for September 1, 1945, his unit eligibility date provided for
15 in Section 6(d)."

16 Now, the unit eligibility date was January 1, 1958, as
17 you will see in Section 6(d).

18 TRIAL EXAMINER: Section 16?

19 MR. PLANT: Section 6(d). That is on page 16.

20 So that we substitute January 1, 1958, for September 1,
21 1945, in that first section you read.

22 TRIAL EXAMINER: Section -- subsection (d)?

23 MR. PLANT: Yes. You will substitute that date.

24 Now, Mr. Bennett, the first of the month following his
25 fifth birthday, subsequent to January 1, 1958, was December

1 1, 1962.

2 TRIAL EXAMINER: I didn't follow you there. I assume
3 that you are going to spell out -- that is seven men involved
4 in that question there?

5 MR. PLANT: Yes.

6 TRIAL EXAMINER: That you will spell it out as to how
7 you arrive at the date that you feel?

8 MR. PLANT: Well, all you have to do, Your Honor, is
9 this. January 1, 1958, is the eligibility date, and he had
10 five birthdays after that, and the first month following his
11 fifth birthday after that was December 1, 1962.

12 TRIAL EXAMINER: Well, five birthdays after January 1,
13 1958?

14 MR. PLANT: Yes.

15 TRIAL EXAMINER: He was born when, in April?

16 MR. PLANT: No, he was born November 10, 1894.

17 TRIAL EXAMINER: He was born November 10th?

18 MR. PLANT: Yes.

19 TRIAL EXAMINER: What would the five birthdays, as I
20 see it, subsequent to January 1, 1958, take him out to?

21 MR. PLANT: November 10, 1958, November 10, 1959,
22 November 10, 1960, November 10, 1961, November 10, 1962, and
23 his compulsory retirement date therefore was December 1st of
24 19 --

25 TRIAL EXAMINER: One month following --

1 MR. PLANT: The first of the month following the fifth
2 birthday.

3 TRIAL EXAMINER: I suggest you spell them out for the
4 seven people for me because I assume you are going to suggest
5 in your brief what you feel the dates with respect to the seven
6 men should be.

7 MR. PLANT: Well, we have them right in our answer.

8 TRIAL EXAMINER: It is in the answer?

9 MR. PLANT: Yes.

10 TRIAL EXAMINER: For the seven of them?

11 MR. PLANT: Yes.

12 TRIAL EXAMINER: All right.

13 Q. (By Mr. Roche) Mr. Arca --

14 MR. PLANT: I will cover it in my brief, too.

15 TRIAL EXAMINER: Yes.

16 Now, with respect to the parole evidence rule, I can't see
17 at all how you can bring in this evidence. It goes to a
18 material part of a written, very formal type of -- so formal
19 that it is difficult to understand -- spelled out retirement
20 plan.

21 I just don't see it.

22 MR. ROCHE: Well, the General Counsel would like to be
23 heard on this, Your Honor, please.

24 TRIAL EXAMINER: Very well.

25 MR. ROCHE: General Counsel contends and can prove

1 that during the 1957 negotiations the parties arrived at an
2 agreement, an oral agreement that --

3 TRIAL EXAMINER: When was this agreement arrived at?

4 MR. ROCHE: 1957 negotiations.

5 TRIAL EXAMINER: That was the one preceding this one?

6 MR. ROCHE: No. 1957.

7 TRIAL EXAMINER: Yes.

8 MR. ROCHE: 1957 negotiations.

9 TRIAL EXAMINER: Is that the contract that was in effect
10 on August 1, 1959?

11 MR. ROCHE: No.

12 TRIAL EXAMINER: On July 31, 1959, is that the contract
13 you were speaking about?

14 MR. LEFF: No.

15 MR. ROCHE: No. There was another contract.

16 The 1967 negotiations were for a contract which would be
17 from 1957 to 1958. Then there were negotiations which led to
18 the contract which was in existence at the time of --

19 TRIAL EXAMINER: Now, this parol evidence that you want
20 to introduce, this arose during the contract preceding the
21 contract which I have to interpret here?

22 MR. ROCHE: Yes.

23 TRIAL EXAMINER: And you want to carry that into the
24 succeeding contract?

25 MR. ROCHE: The General Counsel contends that the parol

1 evidence rule is not applicable here. I want to be heard.

2 TRIAL EXAMINER: Go ahead.

3 MR. ROCHE: During 1957, the 1957 negotiations, the
4 parties reached an oral agreement that Local 1304 would hence-
5 forth, that is after January 1, 1958, participate in the
6 retirement plan.

7 Now, at the time this oral agreement was made, there was
8 in existence a retirement plan written, printed, reduced to
9 writing, and already applicable to other employees of
10 Fibreboard.

11 The written plan that was in existence at the time of
12 the 1957 negotiations did not represent an integration or
13 writing of the oral agreement that had been attained between
14 Local 1304 and Fibreboard.

15 It was an already existing plan. The parties' oral agree-
16 ment stated in effect, "We will adopt this plan or a very
17 similar plan for Local 1304, and we will also provide that
18 individuals who are over 60 years of age as of January 1, 1958,
19 shall be allowed five years, that is until January 1, 1963,
20 before they have to retire, before they have a compulsory
21 retirement date."

22 This is what General Counsel contends, that we have here
23 an oral agreement which happened to include by reference a
24 prior existing retirement plan affecting other employees.

25 TRIAL EXAMINER: I am not going to allow it, but I am

1 going to allow you to make a record, and rather than an offer
2 I am going to allow you to make a record with respect to
3 that, but I am not going to consider it, I am telling you,
4 unless you show me otherwise.

5 This is a very formal document. As a matter of fact, it
6 seems to me that the union wasn't well advised when they were
7 told that they could go upon some oral agreement which was
8 made.

9 It seems to me that it is the old story, particularly in
10 something that is -- I mean this isn't just an ordinary docu-
11 ment. It is a retirement plan, and the union was not well
12 advised, or they didn't have for expert advice to have this
13 thing put in writing.

14 It is the old story, either by codicil or an addendum, or
15 something or other to this, which is in effect a contract,
16 the retirement plan, and I just can't see it.

17 You can make your record, any record you want.

18 MR. ROCHE: I would like to say one further word.

19 The General Counsel not only contends that the parol
20 evidence rule doesn't apply here, because the agreement
21 between the parties was oral and happened to include by
22 reference a pre-existing agreement --

23 TRIAL EXAMINER: What kind of agreement is a pre-existing
24 agreement?

25 MR. ROCHE: A written retirement plan.

1 TRIAL EXAMINER: What about this pre-existing retirement
2 plan, was that in writing?

3 MR. ROCHE: Correct.

4 TRIAL EXAMINER: Does that have that type of clause in
5 it?

6 MR. ROCHE: Which --

7 TRIAL EXAMINER: The one you are speaking about that
8 they --

9 MR. ROCHE: What General Counsel contends the oral
10 agreement is is that we will adopt the retirement plan already
11 in existence for other employees, with these modifications,
12 these changes, and these modifications and changes agreed
13 upon orally, and part of the original oral agreement between
14 these parties was that men over 60 as of January 1, 1958,
15 would be allowed until January 1, 1963, before they would be
16 required to retire.

17 TRIAL EXAMINER: This is an oral agreement which refers
18 to another oral agreement which you want to incorporate?

19 However, you have nothing in writing to show that this --
20 is that correct?

21 MR. ROCHE: There was no recordation of the oral agree-
22 ment at the 1957 negotiations, correct.

23 TRIAL EXAMINER: You have a parol or oral agreement with
24 respect to 1957 negotiations which refers back to another
25 oral agreement?

1 MR. ROCHE: The preceding one was in writing.

2 TRIAL EXAMINER: Which one was that? Are you producing
3 it here?

4 MR. ROCHE: No.

5 TRIAL EXAMINER: Why not?

6 MR. ROCHE: It is very similar to the basic retirement
7 plan.

8 TRIAL EXAMINER: I asked you if you had anything in writing
9 which was incorporated orally. You don't follow me. What is
10 this you have in writing?

11 MR. ROCHE: Prior to 1957, Fibreboard had a retirement
12 plan for other employees, that is employees other than Local
13 1304 employees.

14 During the 1957 negotiations, General Counsel contends
15 the parties reached an oral agreement whereby Local 1304 would
16 participate in a retirement plan, and that one of the provi-
17 sions of that plan would be what we have spoken about, to take
18 care of men over 60 as of January 1, 1958.

19 TRIAL EXAMINER: That is what I say, this is all oral.
20 Am I correct, there is nothing in writing?

21 MR. ROCHE: This is all oral, except they were incorpora-
22 ting by reference a writing that already existed.

23 TRIAL EXAMINER: Where is that writing? Are you going to
24 produce it? Are you going to identify it?

25 MR. ROCHE: We can ask for it to be produced. I don't

1 have the prior agreement myself.

2 TRIAL EXAMINER: At this stage all I have is your repre-
3 sentation. There is an oral agreement referring to a prior
4 written agreement which is not in evidence here which you do
5 not propose to introduce in evidence, and I assume that that
6 prior written agreement would bear out your contention with
7 respect to retirement dates to people who have reached, what
8 is it, 60, on January 1, 1958?

9 MR. ROCHE: No. General Counsel is not contending that
10 the prior written agreement had a specific provision for
11 men who would be over 60 on January 1, 1958.

12 This was a concern of the individual parties in this
13 case.

14 The Union said, "Look, we have some men who may not have
15 enough time in to qualify."

16 And the company said, "For those men, we will let them
17 have five years beyond the effective date of the retirement
18 plan."

19 TRIAL EXAMINER: I wouldn't permit that. I thought first
20 that there was some written provision providing that men who
21 were over 60 years of age on January 1, 1958, would be able to
22 work five years more in order to qualify. That is what it
23 comes down to; right?

24 MR. ROCHE: Right.

25 TRIAL EXAMINER: Would be able to work five years after

1 January 1, 1958, in order to qualify.

2 Now, I may have -- I have evidently misunderstood you,
3 you didn't state it to me clearly, but I was under the
4 impression you were referring, you spoke about incorporation
5 and I thought it was incorporation to a prior writing of some
6 kind in which that provision was in some plan or some retirement
7 plan.

8 However, then when I asked you about incorporation,
9 incorporation meaning to me incorporation of a writing, and
10 then I asked you if it meant you were trying to incorporate
11 a prior oral agreement into a present oral agreement, and it
12 seems to me that that is what you are attempting to do.

13 MR. ROCHE: No. I would like to make a comparison for
14 Your Honor that I think is valid.

15 If we put the case of a small employer and a small union
16 attempting to reach a contract for a certain building tradesman
17 they could reach an oral agreement that they would adopt the
18 master contract of the AGC, except that their pay scale would
19 be, say, ten cents an hour less.

20 I am saying this is an oral agreement, and it is a complete
21 agreement between the parties.

22 It refers to a pre-existing, printed contract, perhaps
23 binding on other parties --

24 TRIAL EXAMINER: That is where you lose me.

25 I think I understand you, and then when I ask you about

1 the pre-existing written agreement, I asked you if that pre-
2 existing agreement will be produced here so that I can examine
3 it to find out whether what it says in there bears out your
4 point, namely, that there was a similar writing with respect
5 to a similar situation in this prior written agreement.

6 MR. ROCHE: If Your Honor would consider the comparison
7 of the small employer and the small union, the small employer
8 and the small union are adopting the existing area contract
9 of the AGC, but with the provision that the wage scale would
10 be ten cents less.

11 Now producing the area contract of the AGC wouldn't show
12 that they had made this agreement on a lower wage scale.

13 TRIAL EXAMINER: My answer to that is that the law and
14 the reason behind the parol evidence rule is a very sound
15 rule.

16 It has been built up over the years, and when you get a
17 very formal type of situation -- take your small employer and
18 your small union. It seems to me that for them to sit down and
19 write out that the wage scale shall be governed by the area
20 contract of this evidently large employer-union group, insofar
21 as it applies to us, that is all that is necessary.

22 You come in with a writing.

23 However, anybody entering into the retirement plan, I
24 think it is of utmost importance. I can't imagine a fringe
25 benefit for the laboring man anything that would be more

1 important as a retirement plan, and to set up something orally
2 I can't envisage it.

3 The only thing I can say is that union people, not being
4 lawyers, didn't seek legal advice, and I think it would cause
5 chaos. I think it would be chaotic if we would allow agree-
6 ments, something such as this retirement plan, to be altered
7 and modified by the type of evidence that you seek.

8 MR. ROCHE: General Counsel contends that this evidence
9 will not alter or modify, but will clarify this contract.

10 I call the Trial Examiner's attention to the contract,
11 to page 33, paragraph 18, and also paragraph 17 on page 32.
12 Now, in paragraph 17 it states, "Each member shall be retired"
13 on his normal retirement date unless his retirement has been
14 deferred in accordance with Section 18."

15 Then turning to Section 18, we find that there are pro-
16 visions in the contract for deferring the retirement date of
17 certain individuals, without going into details about all the
18 possible cases, about all the possible instances where retire-
19 ment could be deferred.

20 The General Counsel is maintaining here that we have one
21 instance of a deferred retirement, certainly not spelled out
22 in the contract, because none of the types of deferred retire-
23 ment are spelled out.

24 TRIAL EXAMINER: I thought that Mr. Plant said that
25 subsection (b), along with subsection (c) of 17 on page 32

1 took care of the type of situation you are attempting to alter.

2 MR. ROCHE: If you note the second sentence in paragraph
3 17, "All of the subsections apply to normal retirement dates."

4 The first sentence, rather, of paragraph 17, however,
5 refers to deferred retirements.

6 Deferred retirements General Counsel contends are what we
7 are talking about for these seven employees.

8 It was a deferred retirement. Deferred retirements are
9 mentioned in the contract but not clarified, and I believe
10 oral evidence is admissible a fortiore because we have two
11 documents, one already received in evidence and one you have
12 deferred ruling --

13 TRIAL EXAMINER: Which one was the one that I deferred
14 ruling on?

15 MR. ROCHE: Union's Exhibit No. 16, I believe it is.

16 These documents originated from the Employer --

17 TRIAL EXAMINER: Let me see Union's Exhibit No. 16, please.

18 MR. ROCHE: -- and confirms what General Counsel maintains
19 about the retirement date of the seven men.

20 It is a writing. The other document already received is
21 a writing. Both of them throw light on and both of them
22 clarify and both of them explain the deferred retirement clearly
23 set forth in paragraph 18.

24 MR. PLANT: Well, there is not the least thing ambiguous
25 about either paragraph 17 or 18, Your Honor.

1 Paragraph 17 says what the normal retirement date shall
2 be, and it says the normal retirement date of both men and
3 women who are members on September 1st, or who became members
4 thereafter, shall be as follows.

5 And then follow those subparagraphs.

6 There is nothing ambiguous about it at all. Paragraph
7 18 simply says that, "Upon request of the Board of Directors,
8 and with the consent of the member, a member may remain active
9 in active employment after his normal retirement date for a
10 period..." and so forth.

11 TRIAL EXAMINER: That is where you are reading from --

12 MR. PLANT: That is 18. That is deferred retirement.

13 In other words, with the consent of the board of directors,
14 upon application of a man, he may continue working past
15 his normal retirement date within certain limits.

16 TRIAL EXAMINER: Suppose they decide to defer an employee,
17 what is the usual procedure after the board of directors have
18 done that, to notify the employee who is being deferred?

19 MR. PLANT: I can't answer that. He is certainly notified,
20 but the normal --

21 TRIAL EXAMINER: How is he notified?

22 MR. PLANT: I can't answer that.

23 TRIAL EXAMINER: You don't know whether they send him a
24 letter, whether there are minutes of the board of directors?

25 MR. PLANT: Well, there are certainly minutes of the

board of directors, but how they notify an employee I can't say. I don't know. I never asked.

MR. ROCHE: As a final word, the General Counsel would like to state that he is not seeking to modify or alter the terms of this retirement plan through oral evidence.

The plan provides for deferred retirement, and the General Counsel is attempting to show that deferred retirements were granted to seven individuals who are involved in this case.

MR. PLANT: By the board of directors of Fibreboard? That is the only way they can be granted.

MR. ROCHE: By agreement between top management and the union, a special provision was made.

TRIAL EXAMINER: When was that and where?

MR. ROCHE: The 1957 negotiations, and confirmed by letter in 1963, and confirmed in 1965, the 1965 negotiations, by the writing you have before you.

MR. PLANT: It was not confirmed by letter in 1963. In 1963 I was -- 1963, what are you talking about? You mean 1965, that letter I wrote Dempster?

MR. ROCHE: Yes.

MR. PLANT: I was frantically trying to get together some basis for including back pay, and I included some erroneous dates, and that is what he is referring to.

MR. ROCHE: Why is it, then, that the erroneous dates

1 seem to be for the seven men that we contend are correct?

2 MR. PLANT: I wrote him a letter enclosing the schedule
3 which contains some erroneous dates.

4 Now, that evidence itself is not competent to vary the
5 plain and unambiguous terms of the plan.

6 MR. ROCHE: Well, as to the plain and unambiguous terms
7 of --

8 MR. PLANT: I am not the board of directors of Fibreboard
9 You mean that it --

10 MR. ROCHE: It was granted in 1957, in the 1957 negotia-
11 tions.

12 MR. PLANT: Before the plan went into effect?

13 MR. ROCHE: Yes. The promise was made by management that
14 employees who were over 60 years of age as of the effective
15 date of the plan, January 1, 1958, would be allowed until
16 January 1, 1963.

17 TRIAL EXAMINER: As a matter of fact, if this is an offer
18 you are making, I believe it is directly contrary to, I believe
19 Section 43(a) of the Rules of Federal Procedure, by which an
20 offer should be made.

21 You are stating it in terms of conclusions, so I would
22 suggest when we get back here Monday morning that you have
23 written out an offer, and I don't want these nebulous letters
24 and high management officials.

25 I want names. I want dates, and I want all written

1 material that you are depending upon. I want you to bring in
2 that letter that Mr. Plant wrote, and then you go on the
3 record, and you make a narrative type offer, and I suggest
4 that --

5 MR. ROCHE: Mr. Plant's letter is already in evidence,
6 Your Honor.

7 TRIAL EXAMINER: All right. Bring it all together then,
8 here, and we will -- well, I am now going to read from a
9 Board decision.

10 "We are cognizant of the following circumstances in
11 connection with the Respondent's offer of proof. It was
12 couched in general and conclusionary terms and failed to recite
13 the identity or description of the witnesses, or other evi-
14 dence to be introduced by the Respondent.

15 "Further, the offer did not delineate the nature, content
16 or scope of any such prospective evidence with any degree of
17 exactitude.

18 "Indeed, the form of the offer more nearly approximated
19 a bare contention by the Respondent rather than an offer of
20 proof.

21 "For these reasons, we find that the Respondent's offer
22 failed to satisfy the standards of specificity required by
23 Rule 43(c), Rules of Civil Procedure for the District Courts
24 of the United States. The Act, in Section 10(b), requires
25 that any proceedings under Section 8 shall be conducted, so

1 far as practicable, in accordance with the rules of evidence
2 contained in these Rules of Civil Procedure."

3 It is my holding to that, although the Board there only
4 mentioned complaint proceedings, that I feel that it applied
5 -- is just as applicable in the back pay proceedings.

6 I suggest that you take a look at 43(c) and you frame
7 your offer on the basis of that. I think I tried to make my-
8 self clear as to what I want. I want everything in front of
9 me.

5 10 I mean if there are any written agreements, the high
11 officials of the company who made this alleged agreement, the
12 officials of the union by name, where, the dates, and so on
13 and so forth, and anything else. In other words, that it be
14 facts, not conclusions or contentions.

15 And that you be prepared at 9:30 on Monday morning when
16 we come in here to do that so I can pass upon it, whether or
17 not what is my present thinking of what I heard here is not
18 admissible.

19 And I want Mr. Plant to be prepared to argue as to why
20 he feels it doesn't pertain, and that this evidence, here,
21 should not go in.

22 I suggest at this point that you leave that and have any
23 witness available, or this witness, if you require him, after
24 I have made my ruling on Monday morning, so that in the event
25 I grant the offer of proof that you have your witness here or

1 witnesses here to testify with respect to that.

2 So let's pass this aside.

3 MR. ROCHE: The General Counsel would like to state for
4 the record that up until now he has not made an offer of
5 proof.

6 TRIAL EXAMINER: I am glad you agree with me.

7 MR. ROCHE: I was engaging in legal argument; and I
8 would prefer to make an offer of proof right now, and do it
9 by interrogatories, and the rules say that we may make an
10 offer of proof by interrogatories.

11 TRIAL EXAMINER: That is a matter of discretion. I pre-
12 fer to have it done. We will leave that right now, and any-
13 thing further you have with this witness you can pass on to.

14 MR. ROCHE: Your Honor, might we have leave to record a
15 few questions and answers of this witness who will not be avail-
16 able to us on Monday?

17 TRIAL EXAMINER: I think that is the risk you will run.
18 Well, I thought this witness was one of your prime wit-
19 nesses with respect to this.

20 MR. ROCHE: No. He is not. He is one of the witnesses.

21 TRIAL EXAMINER: I suggest that you make an arrangement
22 to have him here.

23 MR. ROCHE: Do I understand that Your Honor is declining
24 the request to ask a few questions on this subject?

25 TRIAL EXAMINER: Yes, on this subject, and we will pass

1 on this to Monday.

2 MR. ROCHE: Very well. I have no questions at this time.

3 MR. PLANT: How about Mr. Leff?

4 MR. LEFF: I have no questions.

5 CROSS-EXAMINATION

6 Q. (By Mr. Plant) I call your attention now to the 19th,
7 and the occasion when you drove your pickup truck out into the
8 middle of the street, and I will refer you to Respondent's
9 Exhibit No. 13.

10 Have you been looking at it?

11 A. Yes.

12 Q. The layout is clear to you, is it?

13 A. Yes.

14 Q. Now, you saw a line of cars approaching the plant down
15 Hollis Street -- I mean down 64th Street; is that correct?

16 A. Yes.

17 Q. And those cars I take it were traveling along 64th in a
18 westerly direction; is that right?

19 A. Yes.

20 Q. Where was your truck parked at the time?

21 A. It was parked on 64th Street.

22 Q. It was parked on 64th Street about how far from the
23 intersection with Overland?

24 A. Maybe a quarter of the block up, east.

25 Q. About a quarter of the way from Overland to Hollis; is

1 that right?

2 A. Yes.

3 Q. And it was facing in what direction?

4 A. East.

5 Q. Facing east?

6 A. Yes.

7 Q. And it was on the right-hand side of the street?

8 A. No, I believe it was on the left-hand side of the street.

9 Q. You were on the left-hand side of 64th Street?

10 A. Yes.

11 Q. In other words, you were parked on the wrong side of the
12 street?

13 A. Yes.

14 Q. Where were you standing when you observed these cars
15 approaching?

16 A. Right near the truck.

17 Q. And when you first observed these cars approaching, where
18 was the lead car with reference to Hollis Street?

19 A. Just entering 64th Street.

20 Q. From where?

21 A. Coming down 64th Street.

22 Q. It was just entering 64th Street?

23 A. Well, past Hollis.

24 Q. It was past Hollis?

25 A. Yes.

1 Q. In other words, it had passed Hollis when you saw it?

2 A. Yes.

3 Q. Now, tell me again exactly what you did.

4 A. I got out of my -- I mean I got into my truck and drove
5 to the center of 64th Street and stopped.

6 Q. Why did you do that?

7 A. I wanted to stop those cars coming down 64th Street.

8 Q. Did you have any trouble with the engine of your truck?

9 A. No.

10 Q. It was running?

11 A. Yes.

12 Q. Did you get out?

13 A. Yes.

14 Q. And lift the hood?

15 A. Yes.

16 Q. Why?

17 A. That would give me a reason for being in the middle of the
18 street.

19 Q. And it was then that the officer came over and told you
20 to move your car out of there?

21 A. Yes, that is right.

22 Q. Do you recall testifying in the case over in Oakland
23 before a jury entitled, "Fibreboard Paper Products Corporation
24 versus the East Bay Union of Machinists," et al?

25 A. Yes.

1 Q. I am going to ask you to just read over to yourself, page
2 882 of the transcript, please, which I am showing you.

3 A. How much?

4 Q. This page, and the top of page 283, this first line,
5 please.

6 A. Yes.

7 Q. Now, I am going to read you these questions and answers
8 and ask you if these questions and answers were asked you, and
9 if you gave these answers.

10 "Question: Now, did a line of cars start down the street
11 on the 19th, Mr. Arca?

12 "Answer: Yes.

13 "Question: All right. And did you see the line of cars
14 approaching the plant?

15 "Answer: Yes, sir.

16 "Question: Where did they originate?

17 "Answer: I don't know where they originated, but they
18 were coming down 64th Street.

19 "Question: All right. Did you see them approach the
20 intersection of Hollis Street?

21 "Answer: No. I don't believe I saw them. I believe
22 when I saw them they were already past the intersection of
23 Hollis Street.

24 "Question: All right. And when you saw them in that
25 position you got into your truck, didn't you, Mr. Arca?

1 "Answer: I got into my truck. I don't know what position
2 they were in when I got into my truck.

3 "Question: They were on their way toward the plant at
4 that time, were they not?

5 "Answer: Yes, sir.

6 "Question: You got into your truck and you drove it out
7 into the middle of the street, did you not?

8 "Answer: That is right.

9 "Question: And you brought your truck to a stop in the
10 middle of the street?

11 "Answer: The motor stalled.

12 "Question: The motor stalled?

13 "Answer: Yes.

14 "Question: And can you show us on the map just where the
15 motor stalled, Mr. Arca?

16 "Answer: I started out into the middle of the street,
17 and I believe the motor stalled about here (indicating)."

18 Now, did you give that testimony?

19 A. Yes.

20 MR. PLANT: If you have the transcript there, I am going
21 to refer him to page 886, Counsel.

22 Q. (By Mr. Plant) Now I am going to refer you to the last
23 question at the bottom of page 885 of the transcript and to
24 page 886, down to and through line 7, please.

25 Have you read over onto 886?

1 A. Yes.

2 Q. Now I am going to ask you if on the occasion to which
3 you have just testified, in giving your testimony in that
4 trial, you were not asked the questions and did not give the
5 answers which I am about to read to you.

6 "Question: Now, is it your testimony, Mr. Arca, that in
7 moving your car as you just described it you didn't intend to
8 stop this line of traffic coming down the street?

9 "Answer: In moving my car, Mr. Hanger, I was going to
10 park over on Overland Avenue.

11 "Question: For what purpose?

12 "Answer: Because eventually I was going to have to go
13 over to Powell Street and relieve the picket."

14 Now, were you asked those questions and did you give
15 those answers?

16 A. Yes.

17 Q. Now, turning your attention to the 21st and the occasion
18 when you again had your pickup truck and drove it out into the
19 street, where were you parked on that occasion when you saw
20 the line of cars coming?

21 A. I was on Overland Street.

22 Q. On what side of Overland Street?

23 A. The east side of Overland.

24 Q. And was your car pointed north or south?

25 A. North.

1 Q. So that you were on the right-hand side of Overland going
2 north?

3 A. Right.

4 Q. How far from the corner of Overland and 64th was the car
5 parked?

6 A. Just about at the corner.

7 Q. Now, when you saw these cars coming where were you stand-
8 ing?

9 A. 64th and Overland.

10 Q. Well, on what corner, or were you out in the street?

11 A. The southeast corner.

12 Q. The southeast corner, right by your truck?

13 A. Yes.

14 MR. PLANT: He nodded his head in the affirmative.

15 MR. ROCHE: Let the record so show.

16 Q. (By Mr. Plant) When you saw this line of cars approaching,
17 where were they with reference to Hollis Street, the cross
18 street?

19 A. Crossing Hollis Street, coming down 64th Street.

20 Q. Were some of them already, when you turned to get into
21 your truck, were some of them already past Hollis Street?

22 A. Yes.

23 Q. That is they were on your side of Hollis Street?

24 A. Yes.

25 Q. Now, you got into your truck and you drove it around the

1 corner onto 64th Street, and up 64th Street toward the oncoming
2 line of cars; is that correct?

3 A. Yes.

4 Q. And about -- let me ask you this.

5 On which side of the street did you drive?

6 A. I drove up the rightside of the street, over to the left
7 of center, and put myself in the line of travel of the caravan.

8 Q. When this collision occurred that you testified to, on
9 what side of the street was your car?

10 A. Just left of center.

11 Q. Your truck?

12 A. Just left of center.

13 Q. It was on the left side of the street, wasn't it?

14 A. Right.

15 Q. Now, about how far up the block were you when this colli-
16 sion occurred?

17 A. About one-third up.

18 Q. So during the time that it took you to -- after you saw
19 these cars -- to turn, get into your truck, get your truck
20 started, and get into the street one-third of the way up
21 Hollis Street, the second car, which was the one you had
22 collided with, had progressed only two-thirds of the way down
23 from Hollis?

24 A. Yes.

25 Q. When I believe you testified the first car, when you

1 pulled out in front of it, swerved to avoid you?

2 A. Yes.

3 Q. About how far apart were these cars traveling?

4 A. They were very close together.

5 Q. How far apart would you say?

6 A. I couldn't say.

7 Q. Fifteen, 20 feet?

8 A. I don't believe that they were that far apart.

9 Q. Now, you say you came to a stop in front of the first
10 car?

11 A. Yes.

12 Q. It swerved to avoid you, and then you started up?

13 A. Yes.

14 Q. And stopped again before you collided with the second
15 car?

16 A. Yes.

17 Q. When the first car swerved to avoid you as it went by,
18 did you say anything to its occupants?

19 A. I may have.

20 Q. Well, did you?

21 A. I don't remember.

22 Q. Is it not a fact that you called them scab bastards?

23 A. I could have.

24 Q. Did you?

25 A. I guess I did, yes.

Q. Now, the second car was, as you say, less than 15 or 20 feet behind the first car; is that right?

A. Yes.

Q. But yet when the first car missed you, you had some time to start up and stop again before colliding with the second car?

A. You mean start up the engine?

Q. Start your car moving.

A. The engine was already running. All I had to do was move forward.

Q. And you did that and stopped again before colliding with the second car?

A. Yes.

Q. Isn't it a fact that you were moving forward when the collision occurred?

A. No.

TRIAL EXAMINER: I would like you to ask the witness -- well, which part of your car collided with which part of the other car?

Q. (By Mr. Plant) Let me ask you that question.

What portion of your car collided with the other car?

A. The left part of my grill, bumper and left fender.

Q. You are talking about your front grill, bumper and fender?

A. Yes.

Q. And with what part of the other car did that part of your

1 car collide?

2 A. Pardon?

3 Q. With what part of the other car did your car come in
4 contact?

5 A. I don't understand your question, sir.

6 Q. Well, you hit the other car, or the other car hit you,
7 whichever way you want to put it.

8 What part of the other car did your truck come in contact
9 with?

10 A. I have no idea.

11 Q. Isn't it a fact that you hit the other car virtually head-
12 on?

13 A. I don't know if it was virtually head-on. It was the
14 left part of my grill that was damaged, the left part of the
15 bumper, and the left fender.

16 Q. And it was the front of the other car that was involved;
17 it wasn't the rear, was it?

18 A. I would assume that it was.

19 Q. Now, after this you got out of the truck for a while, did
20 you, before the truck was moved out of the way?

21 A. I got out of my truck.

22 Q. And some people were starting to rock the other car?

23 A. Yes.

24 Q. Did you recognize any of them?

25 A. No.

1 Q. About how many of them were there?

2 A. Maybe eight or nine.

3 Q. And on what side of the other car were they, north or
4 south?

5 A. North.

6 Q. Where were you standing?

7 A. North side of my truck.

8 Q. So that they were in plain view of yourself? You could
9 see them clearly?

10 A. They were in plain view, but I didn't recognize any of
11 them.

12 Q. You didn't recognize any?

13 A. Yes.

14 Q. You had been working in that plant how long? How long
15 had you been working there?

16 A. Sixteen and a half years.

17 Q. It was then that you got back into your truck and moved
18 it?

19 A. Yes.

20 Q. Was that after a policeman came up or before?

21 A. Before.

22 MR. PLANT: I wonder if I could have time out for a drink
23 of water?

24 TRIAL EXAMINER: How much time do you want?

25 MR. PLANT: I take a long drink, so I want ten minutes.

1 TRIAL EXAMINER: We will have a short recess.

2 (A short recess was taken.)

3 TRIAL EXAMINER: On the record.

4 Q. (By Mr. Plant) Now, let's turn to the incident involving
5 Mr. Parker and Mr. Hanger on I believe August 19th, was it?
6 Yes.

7 When you first saw Mr. Parker and Mr. Hanger, where were
8 you?

9 A. I was in a car heading down Overland Street.

10 Q. Heading down Overland Street in what direction?

11 A. Leaving 64th, turning south on Overland Street.

12 Q. In other words, where had you gotten into the car?

13 A. On 64th Street.

14 Q. On which side?

15 A. Just at the intersection.

16 Q. At the intersection of 64th with Overland?

17 A. Yes.

18 Q. And the car had just started down Overland south?

19 A. Yes.

20 Q. And who was driving the car?

21 A. Jack Giffin.

22 Q. Which side of Overland Street was the car on?

23 A. West.

24 Q. In other words, the right-hand side of the street?

25 A. Yes.

1 Q. When your attention was attracted to Mr. Hanger and Mr.
2 Parker, describe what they were doing.

3 A. I saw a group of people at the picket line, and there
4 seemed to be a struggle. Individuals were moving rapidly as
5 if they were struggling with each other, and I asked Jack to
6 stop the car, and I got out and ran over to the picket line,
7 and I threw my arms around Mr. Hanger.

8 Q. Now, you say there was a group of people at the picket
9 line. About how many would you say there were?

10 A. Fifteen or 20.

11 Q. And they were sort of grouped around Mr. Parker and Mr.
12 Hanger, were they, in a semi-circle or a circle?

13 A. Just a large group. I didn't see any form.

14 Q. But they were virtually on all sides of Mr. Parker and
15 Mr. Hanger, were they not?

16 A. I don't know if Mr. Parker and Mr. Hanger were in the
17 center. I couldn't tell you that.

18 Q. Well, were there people on your side of Mr. Parker and
19 Mr. Hanger?

20 A. Yes.

21 Q. And there were people on the other side, also, were there
22 not?

23 A. I don't know.

24 Q. And were there people in front of Mr. Parker and Mr.
25 Hanger?

1 A. I can't recall.

2 Q. Now, you saw that there was some sort of a commotion going
3 on, and you ran over and threw your arms about Mr. Hanger?

4 A. Yes.

5 Q. In what direction was Mr. Hanger facing?

6 A. West.

7 Q. And you came in from the south?

8 A. East.

9 Q. From the east?

10 A. Yes.

11 Q. What was Mr. Hanger doing when you threw your arms about
12 him?

13 A. He seemed to be struggling with someone.

14 Q. Was he bent over or standing up straight?

15 A. I don't know that he was bent over, but I don't believe
16 he was up straight either.

17 Q. Well, it must have been one or the other. Have you any
18 recollection upon the subject?

19 A. Let's say he was fairly upright.

20 Q. Where were his arms?

21 A. They were at his side when I encircled him.

22 Q. He was struggling with somebody with his arms at his sides?

23 A. At least his upper arms were. I don't recall all of it.

24 Q. Where was his briefcase?

25 A. In his hand.

1 Q. Which hand?

2 A. Right hand.

3 Q. Now, you threw your arms around Mr. Hanger. Did you
4 enclose his arms with yours?

5 A. Yes.

6 Q. Did you reach clear around him all right?

7 A. I don't believe I got all the way around, no, sir.

8 Q. And you hoped by that, doing what you did, to do what?

9 A. Keep him from hurting someone.

10 Q. Did it appear to you that he was hurting somebody or try-
11 ing to?

12 A. Yes.

13 Q. Standing there with a briefcase in his hand and his arms
14 at his sides?

15 A. I don't recall that I said he was standing there.

16 Q. What was he doing?

17 A. He was struggling with someone I thought I said.

18 Q. Standing upright and his briefcase in one hand, and both
19 arms at his sides?

20 A. Yes.

21 Q. He was struggling with someone?

22 A. Yes.

23 Q. Did you see who he was struggling with?

24 A. No.

25 Q. Now, what happened when you came up and put your arms

1 around Mr. Hanger like that?

2 A. He swung me around.

3 Q. He swung his body around?

4 A. Yes.

5 Q. Whathappened to you?

6 A. I swung around with him.

7 Q. What happened then?

8 A. A policeman put his arm on my shoulder.

9 Q. What happened then?

10 A. He arrested me.

11 Q. When you threw your arms around Mr. Hanger did one of your
12 fists happen to come in contact with his mouth?

13 A. No, sir.

14 Q. You have no idea how he got his teeth broken?

15 A. No, sir.

16 Q. Did you see Mr. Hanger trying to hit Mr. Groulx with a
17 briefcase?

18 A. No, sir.

19 Q. Did you see anyone throw any punches?

20 A. No, sir.

21 Q. When you came up behind Mr. Hanger, was he waving his
22 briefcase around in the air?

23 A. Not at that time, no.

24 Q. Was he at any time?

25 A. When I saw him from the car he was.

1 Q. Where did he have it up in the air?

2 A. Over his head.

3 Q. Upside down or what?

4 A. In an arc.

5 Q. Swinging it around in a circle; is that it?

6 A. No, it came just over in an arc.

7 Q. Didn't you consider that those 15 or 20 people that were
8 congregated around Mr. Hanger were sufficient in number to
9 restrain him if he needed restraining?

10 A. I didn't give it any thought, sir.

11 Q. You just took it upon yourself to restrain this 6-foot-6
12 man?

13 A. I didn't give it that much thought either, sir.

14 Q. Well, you saw he was pretty big, didn't you?

15 A. Yes.

16 Q. When you came up behind Mr. Hanger did it occur to you
17 -- did it appear to you that he was holding anybody else?

18 A. I couldn't say, sir.

19 Q. But you thought he needed restraining?

20 A. Yes.

21 Q. This man standing there with his briefcase in one hand and
22 both arms at his side?

23 A. Are you telling me, sir?

24 Q. Yes. That is what you said, wasn't it, that he was
25 standing there with a briefcase, and standing fairly straight,

1 with a briefcase in one hand and both arms at his sides?

2 A. I thought I said I saw him struggling with someone.

3 Q. I am talking about the moment when you came up and grabbed
4 him.

5 A. It is difficult to say, sir.

6 Q. What is difficult to say?

7 A. That he was just standing there with his briefcase in his
8 hand not hurting anyone.

9 Q. Well, is that or is that not your testimony?

10 A. I don't know what you want me to say, sir.

11 Q. Well, is it or is it not your testimony that when you
12 approached Mr. Hanger, as you were about to throw your arms
13 around him, he was standing fairly straight with his arms at
14 his side and his briefcase in his hand?

15 A. Well, I don't believe he was motionless, sir.

16 Q. Well, what was he doing?

17 A. He was in the area, there was this struggle, I saw the
18 individual, and I threw my arms around him.

19 Q. Well, was his body moving?

20 A. It moved after I put my arms around him.

21 Q. Was it moving just before you put your arms around him?

22 A. I really couldn't say.

23 Q. Well, were his arms moving?

24 A. I approached the man, I threw my arms around him, sir,

25 and he swung around, and I was arrested, and that is the incident,

1 on the 6th, and I would like to see us defer arguments which
2 can be left for our briefs, and get the evidence in.

3 MR. ROCHE: I would like to give you the cases well in
4 advance as a courtesy of General Counsel, Mr. Plant.

5 MR. PLANT: Well, you can give them to me --

6 TRIAL EXAMINER: Off the record.

7 (Discussion off the record.)

8 TRIAL EXAMINER: On the record.

9 MR. PLANT: I ask leave to amend on the face of Schedule
10 -- make an amendment on the face of Schedule 1 of the Appendix
11 to our amended answer, in the case of D. A. Gronberg, his
12 automatic retirement date being February 1, 1962, rather than
13 January 1st.

14 MR. ROCHE: No objection.

15 MR. LEFF: No objection.

16 MR. PLANT: I don't think it makes any difference in any
17 of my computations.

18 TRIAL EXAMINER: Noted and approved.

19 Off the record.

20 (Discussion off the record.)

21 TRIAL EXAMINER: On the record.

22 MR. ROCHE: General Counsel calls Mr. Lloyd Furber.
23 Whereupon,

24 LLOYD H. FURBER

25 was called as a witness by and on behalf of the General

1 Counsel and, having been first duly sworn, was examined and
2 testified as follows:

3 DIRECT EXAMINATION

4 Q. (By Mr. Roche) State your name and address for the
5 reporter, please?

6 A. Lloyd H. Furber, 3200 Rheem, Richmond, California.

7 Q. You are business representative of Local 1304?

8 A. Yes.

9 Q. How long have you held that position?

10 A. Since July 1952.

11 Q. And you are also a member of the executive board of
12 Local 1304?

13 A. Yes.

14 Q. How long have you been on the executive board?

15 A. Since 1946.

16 Q. I show you, Mr. Furber, Respondent's Exhibit No. 4, and
17 ask you if you can identify that, please.

18 A. Yes.

19 Q. What is that, Mr. Furber?

20 MR. PLANT: Wait. It is in evidence, isn't it?

21 MR. ROCHE: All right.

22 MR. PLANT: What is it, by the way? I would like to see
23 it.

24 MR. ROCHE: You would have found out if you didn't object
25 to the question.

1 request?

2 A. Yes, on July the 31st, 1959, we orally withdrew the request
3 for strike sanction and changed it to request for support of
4 the lockout.

5 MR. PLANT: Support of the lockout or support of the
6 union?

7 THE WITNESS: Support of the union --

8 MR. PLANT: In the lockout?

9 THE WITNESS: Yes.

10 Q. (By Mr. Roche) What was it that caused you to withdraw
11 your strike sanction request?

12 A. We had been informed on July 27th that Fibreboard was
13 going to contract out their maintenance, and all 1304 people
14 were going to be dismissed on July 31st.

15 Q. I take it, Mr. Furber, you have engaged in collective
16 bargaining negotiations on behalf of 1304 with Fibreboard; is
17 that correct?

18 A. Yes.

19 Q. Could you tell us what the Pabco wage formula is?

20 A. It is a dollar a day less than the rates established
21 between the building trades and the Associated General
22 contractors.

23 Q. When did you first hear of the Pabco wage formula?

24 A. 1949.

25 Q. And by whom was the Pabco wage formula proposed?

1 MR. ROCHE: Then I believe we should obtain testimony
2 from this witness, Your Honor.

3 TRIAL EXAMINER: I don't know how much I am going to allow
4 you to get in. I am going to overrule your objection, but I
5 will allow you to phrase the question as you phrased the
6 proposed stipulation.

7 First of all I want to find out how many negotiations
8 between 1949 and 1965 -- I mean 1959, was it, or the last
9 bargaining session that this man attended.

10 Q. (By Mr. Roche) Yes. When did you start participating
11 actively in the negotiations with the Respondent?

12 A. 1952.

13 Q. Have you participated actively in all negotiations since
14 1952?

15 A. Yes.

16 Q. Including the 1965 negotiations?

17 A. Yes, sir.

18 Q. Now, during the period from 1952 until 1965, not including
19 the negotiations of 1965, did the company or its representa-
20 tives at any time during negotiations propose the deletion
21 or change or modification of the Pabco wage formula?

22 A. No.

23 MR. PLANT: Objected to as calling for a conclusion of
24 the witness.

25 TRIAL EXAMINER: Overruled.

1 of having it typed up, and I have it right here, Your Honor.

2 What he testified was that this was when the contractor
3 was operating, he had eight millwrights, and then seven, and
4 then six. They were doing a lot of building and rebuilding,
5 involving a lot of welding, fine welding, pipefitting work
6 that was not work of this bargaining unit.

7 I ended up by asking him this question.

8 "Question: During that time you were there prior to
9 January 1952 -- pardon me -- '65, excluding the welding, pipe-
10 fitting, electrical work, rigging, what was the maximum number
11 of men required to maintain the plant?

12 "Answer: Well, excluding this other work, five I would
13 say."

14 That was the testimony.

15 TRIAL EXAMINER: You recall -- I believe the record will
16 show -- I may have been off the record -- that I asked counsel
17 for that as to what he did testify, that is, what I was trying
18 to find out what he testified, as to what we might say were
19 the number of so-called permanent jobs --

20 MR. PLANT: Bargaining unit jobs.

21 TRIAL EXAMINER: -- bargaining unit jobs there were at
22 that time.

23 MR. LEFF: Your Honor, if there were a higher number of
24 jobs for a period as long as a year, which I think is Mr.
25 Sandin's testimony --

1 MR. PLANT: I just read his testimony, Mr. Leff.

2 MR. LEFF: You didn't read it fully, Mr. Plant.

3 TRIAL EXAMINER: We are not going to get into a question
4 of what the record states.

5 I will take Mr. Plant's representation, but I am still
6 going to read the record. I don't think it has any relevancy,
7 and I am going to sustain the objection.

8 The plant superintendent certainly is the most knowledge-
9 able person with respect to that, it would seem to me. I
10 don't know if he is the most knowledgeable, but you might be
11 able to obtain and put in some testimony which might be proper,
12 but this type of testimony I don't think is reliable.

13 It is not proper, and I don't think this is the proper
14 witness to testify with respect to that, particularly with
15 this very nebulous thing that is called capital improvements.

16 We will have a ten-minute recess at this time.

17 (A short recess was taken.)

18 TRIAL EXAMINER: On the record.

19 MR. LEFF: Your Honor, I would like to make an offer of
20 proof relating to the last point where you refused to permit
21 the questioning of Mr. Furber.

22 TRIAL EXAMINER: Very well.

23 MR. LEFF: I would offer to prove through Mr. Furber's
24 testimony that in 1959 a job known as classifier water filter
25 set up near the Powell Street fence was a job that was done by

1 the subcontractor called in from the outside, and in that
2 instance the plant machinist members of Local 1304 were used
3 for the machinist work to install the pumps and they performed
4 the mechanical work involved.

5 And I would also establish through Mr. Furber's testimony
6 that in 1957 there was a job that required subcontractor work
7 in an elevator in the powerhouse, and this was installed with
8 the plant machinists, the 1304 machinists performing all the
9 mechanical work, and I would also establish through Mr.
10 Furber's testimony that in 1957 another job known as the oil
11 skimmer water pollution control was set up in the refinery, and
12 that, too, required the work of a subcontractor, and as to the
13 machinist work involved the plant machinist members of Local
14 1304 did all of the mechanical work.

15 Also in 1955 there was another job calling for subcon-
16 tractor's work, a job that remodeled the rewinder and installed
17 the bridge crane on the north end of No. 5 in the roofing
18 shop.

19 And here, too, the members of Local 1304 performed the
20 mechanical installation work, that is, the plant machinist
21 members of Local 1304.

22 I think that these are facts within the knowledge of this
23 witness, and he would so testify.

24 MR. PLANT: I would object to the offer on two grounds.

25 Number one, it does not relate to the work of the

1 maintenance machinists. The fact that on occasion the
2 Fibreboard Company used its maintenance force to do some extra
3 work does not mean that that was a part of the work of the
4 maintenance force.

5 However, aside from that, it is utterly immaterial.

6 I am going to read to you again the last question and
7 answer that I asked of Mr. Sandin in the partial that I
8 requested.

9 "Question: During the time that you were there, prior to
10 January 1965, excluding the welding, pipefitting, electrical
11 work and rigging, what was the maximum number of men required
12 to maintain the plant?"

13 Now, all that I excluded was the work of the crafts which
14 had never been done by this union, and his answer was this.

15 "Answer: Well, excluding this other work, five, I would
16 say."

17 TRIAL EXAMINER: I am prepared to rule.

18 Do you care to say anything, Mr. Roche?

19 MR. ROCHE: General Counsel joins in the position of the
20 union counsel.

21 TRIAL EXAMINER: Offer denied, and your exception is
22 noted.

23 MR. ROCHE: May we put some questions and answers in the
24 record on this, Your Honor, to vouch the offer?

25 TRIAL EXAMINER: All right, go ahead.

1 You understand, I want to point out to Respondent's
2 counsel, as he well knows, this is his offer of proof in the
3 form of interrogating the witness.

4 MR. PLANT: All subject to my objection.

5 TRIAL EXAMINER: And the objection was sustained, so you
6 need not cross-examine on the basis of it, Mr. Plant.

7 MR. ROCHE: Thank you.

8 Q. (By Mr. Roche) Mr. Furber, calling your attention to
9 1959, do you know of a job at Fibreboard known as the classi-
10 fier water filter?

11 A. Yes.

12 Q. And what sort of a job was that?

13 A. It involved the setting of some pumps on a base and set-
14 ting on alignment pumps and filters.

15 Q. Where was this job done?

16 A. It was done at the Fibreboard plant close to the Powell
17 Street side.

18 Q. And did this involve the use of an outside contractor?

19 A. Yes.

20 Q. Who actually did the work of installing pumps?

21 A. This is machinist work which was performed by 1304 people.

22 Q. Who performed other mechanical work in connection with
23 the installation?

24 A. I presume -- I have no personal knowledge, but other
25 crafts would have performed the pipefitting, et cetera. I

1 could spell it out. There was pipefitting and there was
2 welding, along with lining up the pumps and the filters.

3 .MR. PLANT: There was some rigging, too?

4 THE WITNESS: There may have been some rigging, yes.

5 Q. (By Mr. Roche) Was the work of the Local 1304 machinists
6 limited to the installation of pumps on that job?

7 A. Pumps and filters, because this was the main part of the
8 job, with the exception of the pipefitting.

9 Q. Now, calling your attention to 1957, was there a job at
10 the Fibreboard plant involving a powerhouse elevator?

11 A. Yes.

12 Q. And who performed the work on that installation?

13 A. The erection and installation of the elevator was per-
14 formed by 1304 people.

15 Q. Do you know how many 1304 people were involved in that
16 particular job?

17 A. It varied from three to five.

18 Q. Calling your attention back to the classifier water
19 filter job in 1959, approximately how many 1304 people were
20 involved in that job?

21 A. Two machinists and one helper.

22 Q. Calling your attention to 1957 was there a job at the
23 Fibreboard refinery known as the oil skimmer water pollution
24 control?

25 A. Yes.

1 Q. And did this involve the use of an outside subcontractor?

2 A. Yes.

3 Q. And did Local 1304 members do any of the work involved on
4 that job?

5 A. They did the machinist work on the job.

6 Q. How many 1304 people were involved?

7 A. Here again it varied from two to four.

8 Q. Calling your attention to 1955, was there a job at the
9 Fibreboard plant which involved remodeling the rewinder and
10 installing a bridge crane?

11 A. Yes.

12 Q. Where was that job performed?

13 A. In the roofing.

14 Q. And were Local 1304 people involved in that job?

15 A. Yes.

16 Q. How many Local 1304 people were involved?

17 A. It was six or seven, because they called for additional
18 men to perform this job, other than that within the plant.

19 Q. What sort of work were the Local 1304 people performing?

20 A. The machinist work, the installing of the crane and
21 assembly.

22 Q. Did they do any work on the rewinder?

23 A. Yes, they installed the rewinder.

24 Q. Mr. Furber, how often did Local 1304 people participate
25 or perform this type of work that we have been discussing?

1 A. We performed it on all of the jobs that we were aware of,
2 and it is difficult to answer your question in time because of
3 the fact that certain jobs may have been subcontracted to
4 employers who had a contract with 1304, and we wouldn't become
5 aware of these particular jobs because they posed no problem.

6 Q. It was subcontracted to some employer who did not have a
7 contract with 1304 -- if it was, would you become aware of it
8 then?

9 A. Yes.

10 Q. Give us an estimate for the record of approximately how
11 often this happened per year, per month.

12 A. Major jobs didn't happen more than once a year.

13 MR. PLANT: I keep forgetting that I am not supposed to
14 object any further.

15 MR. ROCHE: I have completed the questions with respect
16 to the offer of proof, Your Honor.

17 TRIAL EXAMINER: Well, that completes your offer of
18 proof. Very well. The offer is denied.

19 Q. (By Mr. Roche) Mr. Furber, during the period from 1952
20 up to but not including thenegotiations during 1965, did
21 Fibreboard or any of its representatives at any time propose
22 to delete or change or modify the Pabco wage formula that had
23 existed in the contract?

24 A. No.

25 MR. PLANT: Objected to as incompetent, irrelevant and

1 immaterial, and calling for a conclusion of the witness with-
2 out proper foundation having been laid.

3 TRIAL EXAMINER: Overruled.

4 Q. (By Mr. Roche) Your answer was what?

5 A. No.

6 Q. Did you participate in the 1957 negotiations with
7 Fibreboard?

8 A. Yes.

9 Q. And at those negotiations who represented the company?

10 A. Mr. Thumann, Mr. Baldwin, and a Mr. Maffey.

11 Q. And who represented the union at those negotiations?

12 A. Myself, Mr. Stumpf, Lincoln Beck, Dave Arca, Jobe,
13 Novacek and Fuller.

14 Q. During the 1957 negotiations was there any discussion
15 concerning a retirement plan?

16 A. Yes.

17 Q. What was said about retirement plan during those negotia-
18 tions, and by whom?

19 A. Well, there was -- had been considerable discussion about
20 a retirement plan during the '57 negotiations, and our people
21 decided to go into the Pabco plant which was offered them at
22 that time, and there was discussions about people who might
23 be 60 or over who wouldn't qualify at 65 --

24 MR. PLANT: Just a minute. When, where, and with whom
25 did this conversation take place?

1 MR. ROCHE: Yes.

2 Q. (By Mr. Roche) Approximately when was this conversation,
3 Mr. Furber?

4 A. In November of 1957.

5 Q. Who was speaking on behalf of the union?

6 A. Myself.

7 Q. And who spoke on behalf of the company?

8 A. Mr. Thumann.

9 Q. Continue to tell us what was said about these people.

10 A. Well, it was agreed that they would --

11 MR. PLANT: Just a moment. I move to strike that as
12 giving a conclusion by the witness.

13 Q. (By Mr. Roche) Tell us what was said.

14 TRIAL EXAMINER: That last objection is sustained.

15 THE WITNESS: It was said that the machinist members of
16 1304 at Fibreboard would enter --

17 MR. PLANT: Again, I don't like to interrupt, but who said
18 what?

19 TRIAL EXAMINER: Mr. Witness, what we are interested in
20 is who brought up the subject, his name, or what was said, as
21 best you can remember his name, or paraphrase it, and then
22 what the company said, and then back and forth, and take us
23 right into the hearing room, please.

24 THE WITNESS: Yes. I brought up the subject of people
25 who were 60 or over who may not have enough service to qualify

1 for a pension at age 65.

2 At that time I pointed this out and asked that they be
3 continued for five years after the effective date of the plan
4 so they would be qualified.

5 Another point that I raised was that our people had been
6 involved in being out of the plant in 1949 for three or four
7 months because of a warehousemen's strike, and that they be
8 considered as to the time that they were out as time worked for
9 the purpose of computing back service.

10 Mr. Thumann, as spokesman for the company, stated that
11 they would give them the time for the back service that they
12 spent out of the plant because of the warehousemen's strike,
13 and would be given credit for that time as past service, and
14 that they would give the five years for those people 60 or
15 over.

16 Subsequent to January, subsequent to January 1, 1958,
17 that is.

18 TRIAL EXAMINER: So, in other words, if a man would at
19 the least be able to work for five years from 1958, according
20 to your testimony?

21 THE WITNESS: That is correct.

22 Q. (By Mr. Roche) To your knowledge, Mr. Furber, did the
23 retirement plan go in effect for Local 1304 people as of
24 January 1, 1953?

25 A. Yes.

1 Q. At the time of your discussions during 1957, the 1957
2 negotiations, was there a printed retirement plan in booklet
3 form in existence?

4 A. There was for other groups in this plan.

5 Q. Now, after the 1957 negotiations, was anything ever
6 included in your contract with Fibreboard referring to the
7 Fibreboard plan?

8 MR. PLANT: Objected to as calling for secondary evidence.
9 The contracts are in evidence.

10 MR. ROCHE: The witness may testify as to what he knows.

11 TRIAL EXAMINER: Overruled. I will look at the contracts,
12 too.

13 THE WITNESS: No.

14 Q. (By Mr. Roche) Your answer is no?

15 A. My answer is no.

16 Q. Subsequent, during or after the 1957 negotiations, did the
17 union or any of its representatives ever sign a retirement
18 plan?

19 A. No.

20 Q. Now, Mr. Furber, between the 1957 negotiations and July
21 31, 1959, was there any discussion between the company and
22 the union representatives with respect to the retirement dates
23 of any individuals?

24 A. No.

25 Q. Now, calling your attention to the negotiations leading

up to the 1965 contract between Fibreboard and Local 1304,
was there any discussion of retirement dates of individuals
during those negotiations?

A. Yes.

Q. Could you tell us when these negotiations took place?

A. They started in March of 1965 and continued through July,
July 19th, 1965.

Q. And approximately when during that period was there discussion concerning specific retirement dates of certain people?

A. In the early part of the negotiations, the union raised the question of why certain people had not been called back to work, and we were presented at a next subsequent meeting with a chart showing the normal retirement date for these people.

Q. Who presented you with that chart?

A. I am not sure whether Mr. Phelps or Mr. Thumann presented us with it.

Q. I show you Union's Exhibit No. 16 in evidence and ask you if that is the chart that was given to you at that time.

A. Yes.

MR. LEFF: Your Honor, at this point I would ask that this exhibit be introduced into evidence. I believe it was only taken for identification, and you had under consideration its admission.

MR. PLANT: Object to its admission on the ground that it is incompetent. It is an attempt to vary the terms of the

1 written retirement plan.

2 MR. ROCHE: I have statements on this from Wigmore and
3 Thayer and anybody else whoever wrote --

4 TRIAL EXAMINER: Who gave you what has been marked for
5 identification as Union's Exhibit No. 16?

6 THE WITNESS: Management gave it to us in the negotiations
7 in 1965, and I stated that I am not sure who handed it to me,
8 whether it was Mr. Phelps or Mr. Thumann, Mr. Trial Examiner.

9 TRIAL EXAMINER: When it was handed to you what did you
10 do?

11 THE WITNESS: We looked at it and agreed to the retire-
12 ment dates for the --

13 MR. PLANT: I move to strike, "We looked at it and agreed
14 to these retirement dates..."

15 TRIAL EXAMINER: Who agreed? Overruled.

16 THE WITNESS: We accepted the retirement dates.

17 TRIAL EXAMINER: You mean you, the union officials?

18 THE WITNESS: Yes.

19 TRIAL EXAMINER: Was this exhibit discussed any further
20 at this or other negotiations at that time?

21 THE WITNESS: No, I don't recall it was discussed after
22 that, because the question was only raised that it related
23 only to certain people not being called back.

24 TRIAL EXAMINER: It related to certain people not being
25 called back?

1 THE WITNESS: Yes.

2 TRIAL EXAMINER: Why did the company assert that these
3 people were not being called back?

4 THE WITNESS: Because their retirement date occurred prior
5 to January of 1965.

6 TRIAL EXAMINER: How many men were involved in that
7 category?

8 THE WITNESS: Well, there was nine that had various
9 retirement dates prior to 1965.

10 TRIAL EXAMINER: Prior to?

11 THE WITNESS: Yes.

12 TRIAL EXAMINER: How does that --

13 THE WITNESS: There possibly could be --or could have been
14 a few more, because some of them subsequent to '64 had a
15 retirement date.

16 MR. PLANT: All the union was interested in was had their
17 retirement dates occurred before January --

18 TRIAL EXAMINER: -- 18, 1965?

19 MR. PLANT: Yes.

20 TRIAL EXAMINER: Now, he says nine. Now, is he mistaken?
21 Because the figure 17 comes to my mind, and I wonder if he is
22 mistaken.

23 MR. LEFF: The group of seven, the contested group, as
24 to whether their retirement date was January 1, 1963, or
25 varying dates within the 11 months preceding that, as to the

1 number that were actually retired before January 18, 1965, my
2 recollection is that there is about 11 of them, but that docu-
3 ment would show it.

4 TRIAL EXAMINER: 11. And the seven we talked about, when
5 did their retirement or alleged retirement occur?

6 MR. LEFF: We allege January 1, 1963.

7 TRIAL EXAMINER: 1963. So there are a few here which we
8 are not concerned with?

9 MR. LEFF: Yes, which there is no issue as to the retire-
10 ment date.

11 MR. PLANT: There was no issue in January 1965. The only
12 question was had their retirement date already occurred.
13 There was no question about it. Nobody was misled or anything
14 else.

15 TRIAL EXAMINER: The whole purpose of this thing is now
16 whether or not this oral agreement which was entered into
17 should be considered by me in determining these retirement
18 dates.

19 That is what we are making the record on. You have objec-
20 tion, do you not? What was your objection?

21 MR. PLANT: My objection was incompetent, irrelevant and
22 immaterial, and more particularly that it is an attempt to
23 vary the terms of the written retirement plan. ✓

24 That retirement plan had been in writing, as it now is,
25 and in the hands of the union since at least January 1, 1958.

MR. ROCHE: May I be heard on that?

TRIAL EXAMINER: Yes.

MR. ROCHE: Mr. Plant well knows I am sure that the parol evidence rule applies to prior to contemporaneous oral agreements, and when I say prior I mean prior to the time of integration or contemporaneous with the time of integration. And the law is clear, and I am reading from Wilson, that written contracts may be varied by subsequent oral agreement.

Even if the parol evidence rule did apply here with respect to the 1957 negotiations, it certainly has no applicability with regard to oral understanding reached by the parties in 1965.

MR. PLANT: There was no oral agreement in 1965. There is no evidence to show an oral agreement, and this question and answer do not tend to show one.

It tends to show that the union asked for certain information and got it. That is all.

As it happened, it was misinformation, but it didn't matter. It was utterly immaterial to the inquiry which was being made, which was simply whose retirement dates had already occurred.

TRIAL EXAMINER: Let me see that 16. ✓

Did I understand you to say that there is misinformation in this 16?

MR. PLANT: Yes. That sheet gives retirement dates of ✓

1 January 1, 1963, for seven men whose actual retirement dates,
2 according to the plan, were somewhat earlier, but it is all
3 immaterial so far as 1965 was concerned, because their retire-
4 ment dates had already occurred.

5 TRIAL EXAMINER: Now, at what meeting between the
6 negotiators was this presented to you by the company?

7 THE WITNESS: I would say at approximately our third meet-
8 ing.

9 We started in March, and we labored along until July 1965,
10 so it would be at the second or third meeting.

11 TRIAL EXAMINER: Well, I am going to overrule your objec-
12 tion, but if I didn't I want to indicate now that I am passing
13 on its admissibility, and about its probative value I don't know,
14 and as I repeated here numerous times I won't know until this
15 voluminous record has been read by me.

16 There has been too much gone into, and that I can recall,
17 I make no pretense that I can remember that.

18 So your objection is overruled to Union's Exhibit No. 16,
19 and it will be received into evidence.

20 (The document above referred to,
21 heretofore marked Union's
22 Exhibit No. 16, was received in
evidence.)

23 Q. (By Mr. Roche) Now, Mr. Furber, when Union's Exhibit No.
24 16 was handed to you by Mr. Thumann or by Mr. Phelps, did you
25 on behalf of the union raise any objections as to any of the

1 retirement dates set forth therein?

2 A. It agreed with our understanding.

3 Q. Did you raise any objections?

4 A. No.

5 Q. Did you make any statement at all about your position on
6 the retirement dates?

7 A. We accepted them as presented.

8 Q. Is that what you stated, or words to that effect?

9 MR. PLANT: Objected to as being leading.

10 TRIAL EXAMINER: The witness has said repeatedly that they
11 agreed to it, so if they agreed to it it stands to reason they
12 didn't object.

13 MR. ROCHE: Very well.

14 Q. (By Mr. Roche) Calling your attention again to the 1965
15 negotiations, during what month did those negotiations occur?
16 Would you say from March through when?

17 A. July 19, 1965.

18 Q. During what part of that year -- excuse me.

19 Was there discussion concerning wages to be included in
20 the new contract?

21 MR. PLANT: Just one moment, please.

22 Can I please have that read back?

23 (The record was read by the reporter.)

24 THE WITNESS: There was discussions on wages and cost
25 items from about the second meeting on until we finally arrived

1 at a conclusion.

2 Q. (By Mr. Roche) Now, I think there is evidence already in
3 our stipulation to the effect that the basic wage rates pro-
4 vided in the 1965 contract was \$4.00?

5 MR. PLANT: Just a moment. The contracts are in evidence.

6 TRIAL EXAMINER: Yes, I know that, but I assume that
7 counsel here is going to bring out —

8 MR. ROCHE: It is just preliminary.

9 TRIAL EXAMINER: -- what I have expressed some interest
10 in as to how this four-dollar figure was arrived at. It was
11 either on or off the record that I stated that this \$4.00
12 wasn't just taken out of the air. There must have been some
13 basis, pro and con, when the negotiators were arriving at this
14 figure.

15 Now, Mr. Witness, I have got to determine what is a wage
16 period for computations of back pay for these men here, and I
17 have got to know certain things in order to make a rational,
18 I hope, evaluation of what a base pay would have been if these
19 men were working during this back pay period.

20 I am very much interested in that regard in knowing how
21 you, the negotiators, both for the company and the union,
22 arrived at this four-dollar figure.

23 As I say, you must have gone into -- that I perhaps I
24 might say, generally speaking, wages is the most important
25 thing, as you know.

1 I want you to search your memory, if you can possibly do
2 so, in terms of the times of the negotiations in the beginning,
3 towards the middle, or the end, starting from the beginning,
4 and give me your recollection of all you can remember with
5 respect to this four-dollar figure and how it was arrived at,
6 and I want you to be as definite as you can, if you can,
7 whether it was Mr. Thuman or Mr. Pheips of the company who
8 said something, whether it was yourself or Mr. Stumpf, or any
9 other official.

10 Do you understand?

11 THE WITNESS: Yes.

12 TRIAL EXAMINER: Start right from as far back as you can,
13 which was back in March, and in other words take us into that
14 negotiating session, and let us know what happened with
15 respect to that four-dollar wage. That is all I am interested
16 in now.

17 The other things, we will leave that side for the time
18 being.

19 THE WITNESS: Upon receiving the Board decision that
20 Fibreboard should negotiate with the union, it approached the
21 union for negotiations, and we set up a series of meetings,
22 and the union was bargaining from a relatively weak economical
23 position.

24 Number one, we did not have all our people back in the
25 plants. We did not even have a majority of the people back in

1 the plant. X

2 We were bargaining from this type of a weak position.

3 Secondly, we had been informed by our counsel to be very
4 careful of reaching an impasse because all the orders said that
5 management should bargain with you. It doesn't say that they
6 have to agree.

7 And if you reach an impasse you could find yourself in a
8 position of not concluding an agreement.

9 As to the matter of arriving at the four-dollar figure,
10 the proposed rate was 3.74 in the initial negotiations by
11 management, and we bargained from that position on up.

12 TRIAL EXAMINER: Do you know whether that 3.74 figure, if
13 it has a history?

14 THE WITNESS: As I recall that, the statement was that
15 the 3.74 figure was taken from the maintenance contract,
16 Shedebursh maintenance contract in Sunnyvale.

17 TRIAL EXAMINER: Were they a member of that distributor's
18 association group?

19 THE WITNESS: Yes, they were.

20 MR. PLANT: I thought they had a contract with your
21 union.

22 THE WITNESS: He asked me if they were a member of the
23 group.

24 TRIAL EXAMINER: The multi-employer group, and you say
25 they are. Proceed, please.

1 MR. PLANT: Bear in mind, Your Honor, so we won't get con-
2 fused, the distributors association negotiates only with the
3 ILWU.

4 TRIAL EXAMINER: I know that.

5 THE WITNESS: I beg your pardon, Your Honor, but they did
6 negotiate with 1304.

7 TRIAL EXAMINER: They did negotiate with 1304, too?

8 THE WITNESS: Yes.

9 TRIAL EXAMINER: I see.

10 THE WITNESS: Then we looked at the possible means of
11 getting together and the union suggested a rate of \$4.25 per
12 hour, and through bargaining between the parties we finally
13 arrived at a rate of \$4.00 an hour that we could in good
14 conscience, although we felt it was an inadequate wage rate,
15 we could accept.

16 TRIAL EXAMINER: Let me ask you this. This \$4.25 that
17 you proposed, the union proposed, does that have a history?

18 THE WITNESS: It has a history, and related at that time,
19 we had a plant which subsequently has gone out of business
20 who carried the \$4.25 rate, and that was the old Ralston-
21 Purina plant. Your Honor, I guess that is about the story.

22 TRIAL EXAMINER: Very well. We will recess until 2:00
23 o'clock.

24 (Whereupon, at 12:00 o'clock noon, a recess was
25 taken until 2:00 o'clock p.m., the same day.)

AFTERNOON SESSION

2:00 p.m.

TRIAL EXAMINER SAHM: On the record.

MR. ROCHE: The General Counsel has no more questions at this time.

Whereupon,

LLOYD H. FURBER

resumed the stand and, having been previously duly sworn, was examined and testified further as follows:

CROSS-EXAMINATION

Q. (By Mr. Leff) Mr. Furber, do you remember when in March 1965 the negotiations started?

A. I don't recall the day that it started, but I recall that it was in March when they first had discussions.

Q. Had anybody returned to work at the time you had met?

A. Yes, some.

Q. I am not sure you were present, but it was stipulated that the first person returned to work on March 22, 1959.

MR. PLANT: I don't know as we stipulated to that.

THE WITNESS: I think some returned before that.

MR. PLANT: I don't think we stipulated to that.

MR. LEFF: I am sorry. I thought the \$4.00 was retro-active to March 22nd, which was the date the first person returned.

MR. PLANT: I think I stated I wasn't sure when the first

1 person returned, but it was made retroactive to when they
2 returned.

3 TRIAL EXAMINER: Retroactive to what?

4 MR. LEFF: The four-dollar rate was made retroactive to
5 those individuals who had rejoined the company from the date
6 the first one rejoined.

7 TRIAL EXAMINER: Is it necessary that I know that?

8 MR. LEFF: No, I think I just used that to establish the
9 date the negotiations had started, but it is not a great
10 measure, Your Honor.

11 Q. (By Mr. Leff) Mr. Furber, in the course of these negotia-
12 tions, or when they began, who presented the first draft of
13 any written proposals?

14 A. I think I would have to go back beyond the draft. The
15 general discussion before a draft was presented was what rate
16 of pay are you paying these people you are calling back to
17 work, and at that time the discussion was the different posi-
18 tions of the parties, and the management said —

19 Q. Let's establish this in time.

20 Was this prior to your first negotiating meeting?

21 A. It was either just prior to or during the first meeting,
22 yes.

23 Q. This was a discussion of what rates would apply to the
24 people who were called back?

25 A. Right.

1 Q. What was that discussion? Who was present and who said
2 what?

3 A. Mr. Thumann and Mr. Phelps were present, and to tell you
4 exactly who said what in so many words, I can't do this.

5 Q. What was the effect of what they said?

6 A. The discussion was around what rate of pay would our people
7 receive when they called them back to work.

8 Q. What was that discussion?

9 A. Our position was to pay them the rate of the contract,
10 and their position was, "No, we will pay them a rate," and
11 they arrived at the 3.74 figure.

12 Q. When you say your position was that they should be paid
13 the rate of the contract, which contract are you talking
14 about?

15 A. I am talking about the Pabco formula in the contract, up
16 through '59.

17 Q. That is the 12 and a half cents under the building mill-
18 wright rate?

19 A. Right.

20 Q. And when you said the rate under the contract, was that
21 applying the formula to the then building trades rate?

22 A. Up-to-date formula, yes.

23 Q. Can you recall what that rate was that you were asking
24 for?

25 A. I believe it was \$4.80 an hour.

1 TRIAL EXAMINER: How was that arrived at?

2 THE WITNESS: This was taking the 12 and a half cents off
3 the then millwright's rate under the building trades contract.

4 TRIAL EXAMINER: Where is that dollar under the construc-
5 tion --

6 MR. LEFF: It is a dollar per day, Your Honor, which is
7 12 and a half cents per hour.

8 TRIAL EXAMINER: Oh.

9 Q. (By Mr. Leff) This discussion in which you proposed the
10 contract rate or the Pabco formula rate, and what was the
11 company's proposal at that time?

12 A. The company's proposal was, of course, the formula was
13 out, and their proposal was that they would pay 3.74, and what-
14 ever we arrived at in negotiations would be retroactive.

15 Q. And who presented the first written proposal?

16 A. Management presented a complete contract proposal, which
17 was the first written proposal.

18 Q. And in that proposal what was the wage rate that they
19 proposed?

20 MR. PLANT: I will object to that as calling for secondary
21 evidence.

22 TRIAL EXAMINER: Overruled.

23 A. \$3.74.

24 Q. (By Mr. Leff) Did the union take a position in response
25 to this?

1 A. We took the position that we had a contract to apply that
2 rate.

3 TRIAL EXAMINER: What was that again?

4 THE WITNESS: The union took the position we had a con-
5 tract to apply the contract rate that was in effect.

6 MR. LEFF: Your Honor, may I simply interject at this
7 point that the union's position was that that contract was
8 still in existence, the 1959 contract, and that is the one
9 that is being referred to as the contract.

10 TRIAL EXAMINER: In other words, that is on your theory
11 that it never terminated?

12 MR. LEFF: Right.

13 Q. (By Mr. Leff) In response to your stated position that
14 that contract was in effect, what was stated by the company to
15 be their answer to that?

16 A. Management stated that this rate was out, and that they
17 were there for the purpose of negotiating a new agreement.

18 Q. Did you make any further proposals as far as rate was
19 concerned?

20 A. Prior to getting down next to the final meeting, there was
21 a different proposal made by the union. We proposed a rate
22 of \$4.50 an hour.

23 Q. How was that \$4.50 arrived at?

24 A. Just simply a bargaining figure.

25 Q. What was the company's response to that proposal?

7.

1 A. That it was too high.

2 Q. Did the union present any further proposals on rate?

3 A. Yes, we presented a proposal either at the meeting we
4 reached the four-dollar figure or at the meeting immediately
5 preceding of \$4.25.

6 Q. And is that the rate you testified to this morning in
7 response to Mr. Roche's questions?

8 A. Yes.

9 Q. And the rationale for that \$4.25 was that it was, I think
10 you said it was the Ralston-Purina rate?

11 A. Correct.

12 Q. And what was management's response to the 4.25 rate?

13 A. That it was still too high.

14 Q. And then in due course you negotiated a rate in between
15 the 3.74 and the 4.25; is that right?

16 A. We arrived at a figure of \$4.00.

17 Q. And that is the rate that was embodied in the contract?

18 A. That is right.

19 MR. LEFF: No further questions, Your Honor.

20 TRIAL EXAMINER: Let me ask you this.

21 Do you have any members of your union who do work similar
22 to the unit employees at Fibreboard who you are now negotiating
23 a contract for in the Bay Area here or, rather, represent in
24 the Bay Area here?

25 THE WITNESS: Yes, we do.

1 TRIAL EXAMINER: Who is that?

2 THE WITNESS: It is not exactly similar, but a very
3 similar work at El Dorado Oil.

4 TRIAL EXAMINER: And what are your maintenance men getting
5 there?

6 THE WITNESS: Presently?

7 TRIAL EXAMINER: Yes.

8 THE WITNESS: 4.36.

9 TRIAL EXAMINER: Any other that is similar to the type of
10 work done at Fibreboard?

11 THE WITNESS: There is Durkee Famous Foods at Encinal
12 Terminals.

13 TRIAL EXAMINER: Tell me what each of those are now getting.

14 THE WITNESS: I think they would vary from 4.31 to 4.36,
15 and the reason they would vary a nickel would be because of
16 some other fringe benefits in the agreement that perhaps cost
17 a nickel.

18 TRIAL EXAMINER: But approximately that is it?

19 MR. LEFF: May I ask a further question in response to
20 that?

21 TRIAL EXAMINER: Yes.

22 Q. (By Mr. Leff) Mr. Furber, referring to the period prior
23 to July 31, 1959, did you bargain for your members at Durkee
24 Famous Foods in Encinal Terminals?

25 A. Yes.

1 Q. And referring again to before July 31, 1959, what was the
2 relationship between the rate at Fibreboard and the rate in
3 these plants, if you can remember?

4 A. I don't know the exact --

5 MR. PLANT: Just a moment, I will object to that as
6 incompetent, irrelevant and immaterial.

7 I have no objection to testimony as to what the rates
8 were. The relationship will speak for itself.

9 TRIAL EXAMINER: Let me hear that question again, Mr.
10 Reporter.

11 (The record was read by the reporter.)

12 TRIAL EXAMINER: Overruled.

13 THE WITNESS: The rates at Fibreboard were considerably
14 higher, but the exact cents per hour I couldn't say.

15 MR. LEFF: No further questions.

16 MR. PLANT: I might say that those rates that he mentioned
17 for Durkee Famous Foods and the others are in that schedule
18 to which we have stipulated.

19 Q. (By Mr. Plant) Turning to the 1965 meetings which I
20 suppose are the most fresh in your recollection, do you recall
21 Mr. Thumann telling you that they were not going to agree to
22 a rate which would give them higher labor costs than those
23 which they had with the independent contractor?

24 A. He perhaps had made that statement, yes. I don't recall
25 it in those exact words, but he had made a statement to that

1 effect.

2 Q. And don't you recall him giving you figures as to the
3 fringe costs, vacation, overtime, and so forth, of the contract
4 as compared with the fringe cost under your old contract?

5 A. Yes.

6 Q. Pointing out that the contractor only paid time and a
7 half or double time -- time and a half for overtime, whereas
8 you had gotten double time for overtime?

9 THE WITNESS: What is his question?

10 TRIAL EXAMINER: You don't understand it?

11 THE WITNESS: No, I don't understand the answer he wants.

12 TRIAL EXAMINER: Well, it is not a question of the answer
13 he wants. The question is if you don't understand it you tell
14 me and I will have him repeat the question.

15 Do you understand or don't you?

16 THE WITNESS: I don't understand it enough to answer it.

17 TRIAL EXAMINER: Repeat your question, then.

18 Q. (By Mr. Plant) Do you recall him pointing out to you the
19 fringe benefit paid by the contractor to his employees, as
20 compared with the fringe benefits which you had received under
21 your old contract?

22 A. Yes.

23 Q. And do you recall his calling your attention to the fact
24 that the contractor for example paid only time and a half for
25 overtime, whereas you had gotten double time for overtime?

1 A. Yes.

2 Q. And do you recall his taking the position that these
3 factors all had to be taken into consideration in fixing the
4 wage rate for your people?

5 A. Yes.

6 Q. And do you recall his saying that he would not agree to
7 a wage rate which would increase their costs over what the
8 costs were they had with the contractor?

9 A. Not in those words. I recall that he stated they were
10 not about to sign an agreement that would increase their
11 costs.

12 Q. Do you recall his telling you that the four-dollar rate
13 upon which you finally agreed, taking everything into con-
14 sideration, would be the equivalent of what the contractor
15 had been paying?

16 A. No, that is not quite the way it was put.

17 Q. Well, how was it put?

18 A. It was put that it would be nearly the equivalent.

19 Q. Yes. And wasn't that the basis upon which the four-dollar
20 wage rate was arrived at?

21 A. It wasn't our basis entirely, no.

22 Q. But you accepted the company's figure.

23 A. Certainly we accepted the four-dollar rate.

24 Q. Now, let's go back a bit in history. Let's go to these
25 1957 pension plan negotiations.

1 inference that can be drawn from it with respect to the issues
2 in this case.

3 MR. LEFF: Thank you, Your Honor. I have no further
4 questions.

5 MR. PLANT: I have no further questions.

6 TRIAL EXAMINER: You are excused. Thank you.

7 (Witness excused.)

8 MR. ROCHE: General Counsel requests a short delay of
9 maybe 15 minutes.

10 A long missing witness has appeared, and I would like an
11 opportunity to talk to him before calling him.

12 TRIAL EXAMINER: Very well. We will recess until 3:30.

13 (A short recess was taken.)

14 TRIAL EXAMINER: Are you ready to call your next witness?

15 MR. ROCHE: Yes, Your Honor.

16 General Counsel calls Richard Groulx.

17 Whereupon,

18 RICHARD K. GROULX

19 was called as a witness by and on behalf of the General
20 Counsel and, having been first duly sworn, was examined and
21 testified as follows:

22 DIRECT EXAMINATION

23 Q. (By Mr. Roche) Would you please state in full your name
24 and give your address to the reporter?

25 A. Richard K. Groulx, G-r-o-u-l-x. I live at 8139 Elgin Lane

1 in Dublin, California.

2 Q. What is your occupation, sir?

3 A. I am executive secretary of the Central Labor Council of
4 Alameda County.

5 Q. Now, calling your attention to August 19, 1959, where
6 were you on the morning of that date?

7 A. I was at the warming drum on 64th Street on the right side
8 of the street as you go towards the plant.

9 Q. And what street was that?

10 A. 64th Street.

11 Q. Was it near an intersection?

12 A. Yes.

13 Q. The intersection of what?

14 A. I don't know, sir. It is the last street just before
15 you get to the plant.

16 Q. Near the railroad tracks?

17 A. Yes.

18 Q. And was that Overland Street?

19 A. I think it is.

20 Q. What time did you arrive there on that morning?

21 A. About 6:00 or 6:30.

22 Q. And while you were there that morning did you observe Mr.
23 Lincoln Beck at any time?

24 A. Yes, I did.

25 Q. And what was Mr. Beck doing when you saw him?

1 A. He was picketing at the plant gate.

2 Q. And approximately what time did you see Mr. Beck?

3 A. About somewhere between 9:30 and 10:00, I think.

4 Q. And was anybody with Mr. Beck at the time you saw him?

5 A. Yes, there were two men in business suits facing him.

6 Q. Do you know who these two men were at the time?

7 A. No, sir.

8 Q. Did you later find out who they were?

9 A. Yes, I did.

10 Q. And who were they?

11 A. Chuck Hanger and Mr. Parker.

12 Q. And those were attorneys for Fibreboard; is that correct?

13 A. Yes, sir, they are.

14 Q. Now, how far away from Beck, Hanger and Parker were you
15 when you observed them?

16 A. I was across the street, and some little distance more
17 than that, across the intersection by the bridge.

18 Q. Approximately how far?

19 A. Fifty or 60 feet, probably.

20 Q. Now, did you see or hear anybody from where you were?

21 A. I could hear conversation, but not clearly. I couldn't
22 hear what was said, but it was obviously to me I thought an
23 argument.

24 Q. And what did you see from where you were?

25 A. I saw the two men crowding Mr. Beck. He was moving a

1 little bit backwards, and they were quite close to him.

2 Q. And what did you do at that time?

3 A. I crossed the intersection and came around Mr. Beck and
4 stood just a little bit to his right and to the rear.

5 Q. Did you hear any conversation when you arrived closer to
6 the group?

7 A. Yes. Mr. Beck was trying to find out who the men were
8 and what they wanted and -- what they wanted in the plant.
9 The taller man, Mr. Hanger, did not seem to be arguing very
10 much with Beck, but Parker was talking to him and arguing to
11 him, and Beck was trying to find out what their purpose was
12 there.

13 Q. And did you observe anyone in this group lay hands on any
14 other one in the group?

15 A. Mr. Beck when I first came across put up a hand as if to
16 restrain them or restrain Mr. Parker, and then as I was there
17 shortly Mr. Parker reached out towards me later.

18 Q. Did you hear Mr. Parker say anything?

19 A. Yes. Mr. Beck asked Mr. Parker who he was and what his
20 purpose was, and as he put his hand up Parker said that no
21 fucking goon was going to stop him from going into the plant.

22 TRIAL EXAMINER: Now, who said that?

23 THE WITNESS: Mr. Parker.

24 TRIAL EXAMINER: Attorney Parker?

25 THE WITNESS: Yes, sir.

1 Q. (By Mr. Roche) And what happened after that? Tell us in
2 your own words what happened.

3 A. Well, I was a little to the right of Beck, and when that
4 happened I moved in across Mr. Beck, or started to go across
5 Mr. Beck.

6 Parker put up his hand towards me, and finally shoved me
7 a little to the side. I thought he was going to hit me at the
8 time, and I hit him with the right hand.

9 Q. And how many times did you hit him?

10 A. I hit him twice, or possibly three times. I don't remem-
11 ber. I hit him with a right, and then with the left, but I
12 don't remember whether I hit him with another right or not.

13 Q. Where was the first blow struck?

14 A. Into the stomach.

15 Q. And the next blow?

16 A. To the head.

17 Q. Did either of these blows knock Mr. Parker down?

18 A. No, sir.

19 Q. What effect if any was there from the blows?

20 MR. PLANT: I object to that as calling for the conclusion
21 of the witness.

22 TRIAL EXAMINER: Overruled.

23 Q. (By Mr. Roche) What effect, if any?

24 A. The first blow doubled Mr. Parker up. He doubled over.

25 Q. And how about the second blow?

1 A. It didn't seem to do very much to him.

2 Q. And after you struck Mr. Parker, what happened then?

3 A. Then a policeman who was standing near me grabbed me by
4 the left arm, and Mr. Parker then hit me while the policeman
5 held me.

6 Q. And how many times did Mr. Parker hit you?

7 A. Well, he hit me once hard to the right side of my head,
8 and I am not sure whether he threw another blow or not.

9 Q. And what happened after Mr. Hanger struck you?

10 A. I sagged a little bit, and then hit him with my right
11 hand.

12 Q. And where did that blow land?

13 A. I hit him in the mouth, in the jaw.

14 Q. Did you hit him again after that?

15 A. I don't remember. I don't remember hitting him more than
16 once.

17 Q. You do remember the one blow?

18 A. Yes, I hit him hard with the right hand.

19 Q. And what happened after that?

20 A. Well, the policeman then again grabbed me, and then Dave
21 Arca caught Mr. Hanger from behind and held his arms, and then
22 they put me in a police car.

23 Q. Was Mr. Arca present when you struck Mr. Parker?

24 A. No, sir.

25 Q. Was Mr. Arca present when you struck Mr. Hanger?

1 A. No, sir.

2 Q. Do you know where Mr. Arca was at the time you struck
3 these two men?

4 A. Yes, he was across the street.

5 Q. Did you see Mr. Arca approaching the area where you were?

6 A. I saw him right after I hit Mr. Hanger. Just as they
7 took me away he came over almost instantaneously with my hitting
8 Mr. Hanger.

9 Q. Now, going back just a minute, Mr. Groulx, you stated that
10 Beck was asking Parker and Hanger who they were; is that cor-
11 rect?

12 A. Yes, sir.

13 Q. And did either Parker or Hanger identify himself to Mr.
14 Beck?

15 A. No, sir.

16 Q. Did either Mr. Parker or Hanger indicate what his business
17 was in the plant?

18 A. No, sir.

19 Q. Did either Parker or Mr. Hanger state that he was an
20 attorney for the company?

21 A. No, sir.

22 Q. How long have you known David Arca?

23 A. Quite a few years. I have known him, well, since 1958.

24 Q. How tall are you, Mr. Groulx?

25 A. Five-foot-seven.

1 Q. And approximately how tall is Mr. Arca?

2 A. He is about my height.

3 Q. How does his weight compare with yours?

4 A. I think he is a little lighter now, but at that time he
5 was probably a little lighter, too, but we were both consi-
6 derably -- maybe he may have weighed about 150 pounds at that
7 time.

8 Q. How much did you weigh at the time?

9 A. About 155.

10 MR. ROCHE: No further questions.

11 MR. LEFF: I have no questions.

12 MR. PLANT: Just a moment, Your Honor.

13 CROSS-EXAMINATION

14 Q. (By Mr. Plant) When you hit Mr. Parker did he have a pad
15 of paper in his hand writing?

16 A. I don't remember, sir. He may have had. I don't remem-
17 ber. He wasn't writing, to my knowledge.

18 Q. Did he have a pad of paper laying on a red-colored folder,
19 a folder about the color of this, holding it in his hand and
20 getting ready to write?

21 A. I don't recall.

22 Q. Do you recall that he didn't, or do you recall that he
23 did, or you have no recollection?

24 A. I cannot remember whether he did or did not.
25

1 Q. Well, you testified that he reached out and gave you a
2 push, and that is the reason that you hit him.

3 A. Yes, sir.

4 Q. And he did this with a pad of paper in his hand lying
5 on this manila folder?

6 A. I don't remember him having a pad of paper in his hand,
7 sir, at all.

8 Q. You said that if Mr. Beck said that he did, then Mr. Beck
9 was mistaken; is that right?

10 A. No, sir.

11 Q. Now, when you hit Mr. Parker you say there was a policeman
12 nearby.

13 A. Yes, sir.

14 Q. How far away was he from you?

15 A. Perhaps three to five feet, quite close.

16 Q. What did he do then?

17 A. He grabbed me by the left arm.

18 Q. And he did that immediately?

19 A. Yes, sir.

20 Q. And then Mr. Hanger hit you?

21 A. Yes, sir.

22 Q. With what fist?

23 A. I think he hit me with his right hand.

24 Q. Did he have a briefcase in it?

25 A. No, sir.

1 Q. Now, after he hit you the policeman was holding your arm
2 at the time?

3 A. Yes, sir, left arm.

4 Q. When Mr. Hanger hit you?

5 A. Yes, sir.

6 Q. And you managed to hit Mr. Hanger even though the police-
7 man was hanging onto you?

8 A. Yes, sir.

9 Q. Quite a trick, wasn't it?

10 A. No, sir.

11 THE WITNESS: May I explain, Your Honor?

12 When he had my left arm and Mr. Hanger hit me, I almost
13 fell, and he loosened his hand apparently to catch me. I had
14 one hand free at all times.

15 Q. (By Mr. Plant) Now, do you recall testifying in a hearing
16 involving contempt charges against various people over in
17 Oakland?

18 A. Yes, sir.

19 Q. Do you recall testifying about this incident involving
20 Mr. Hanger and Mr. Arca?

21 A. Yes, sir.

22 Q. Did you on that occasion testify that you hit Mr. Hanger?

23 A. Yes, sir.

24 Q. You did.

25 MR. PLANT: Well, the transcript of what this witness did

1 testify is in evidence, Your Honor. To find out what he didn't
2 testify to you will just have to refer to the whole thing.

3 MR. ROCHE: Page 635 is what you want.

4 MR. PLANT: I have page 635. It is a bunch of other
5 pages, and I would have to go through the whole thing to show
6 that he didn't give that testimony.

7 MR. ROCHE: Well, he testified on page 635.

8 MR. PLANT: He did not.

9 MR. ROCHE: Well, the transcript will show.

10 MR. PLANT: Yes, the transcript will show.

11 He at nowhere testified that he hit Mr. Hanger. He made
12 a slip of the tongue and corrected himself. He said at that
13 time, "Did you see Mr. Parker at that time?"

14 "Answer: At that time after I hit Mr. Hanger, or after
15 Mr. Hanger hit me, rather, because I saw the movement as he
16 came across, Mr. Arca came up and grabbed Mr. Hanger, and by
17 that time they pulled me, I mean they pulled me away. That
18 is all I saw."

19 MR. ROCHE: I don't see any need to engage in legal
20 argument at this time. The transcript is in.

21 MR. PLANT: The transcript is in.

22 I have no further questions.

23 TRIAL EXAMINER: Anything further?

24 MR. ROCHE: Nothing further.

25 TRIAL EXAMINER: You are excused. Thank you.

1 evidence because I think that that is relevant to show the
2 length of picketing. I see no relevance to 22(a), the preliminary
3 injunction that was issued at some prior time.

4 MR. PLANT: Well, except that 22(b) modifies 22(a). I
5 think you have to read them together.

6 TRIAL EXAMINER: Any objections before me?

7 MR. LEFF: I object to 22(a).

8 TRIAL EXAMINER: I am passing on the admissibility, and as
9 I said many times previous, the probative value was something
10 else again.

11 Overruled. Respondent's Exhibits 22(a) and 22(b) will be
12 received into evidence.

13 (The documents above-referred to,
14 heretofore marked Respondent's
15 Exhibits Nos. 22(a) and 22(b),
were received in evidence.)

16 TRIAL EXAMINER: Off the record.

17 (Discussion off the record.)

18 TRIAL EXAMINER: On the record.

19 MR. PLANT: Now, your Honor, I don't think that there is
20 any disagreement about this.

21 The modified preliminary injunction was issued on
22 September 4th, 1959, and the picketing ceased on or very shortly
23 after that date.

24 MR. ROCHE: So stipulated.

25 MR. LEFF: So stipulated.

1 TRIAL EXAMINER: Noted and approved.

2 MR. PLANT: One further little loose end that I think
3 should be made clear for the record is this.

4 Reference has been made throughout this hearing to the
5 truck shop at Emeryville and I think we just all sort of
6 assumed that your Honor know what kind of trucks were serviced
7 in the truck shops.

8 May we stipulate that they were primarily lift trucks or
9 fork lift trucks?

10 MR. LEFF: Trucks used for internal transportation in the
11 plant.

12 MR. PLANT: Mostly lift and fork trucks.

13 MR. ROCHE: So stipulated.

14 MR. LEFF: So stipulated.

15 TRIAL EXAMINER: Noted and approved.

16 MR. PLANT: That ties up my loose ends, but counsel have
17 asked for a stipulation relative to Mr. Olson and I have such
18 a stipulation which I am prepared to enter into.

19 Do you wish me to read it off now?

20 MR. ROCHE: Please.

21 MR. LEFF: Yes.

22 MR. PLANT: It is hereby stipulated that J. Giffin, altho
23 employed as working foreman in the powerhouse in July, 1959,
24 did not have seniority as a powerhouse engineer or fireman and
25 that if Fibreboard had been operating the powerhouse with its

1 own employees during the back pay period, C. W. Olson rather
2 than Giffin probably would have replaced R. Hughes when the
3 latter reached his compulsory retirement date on October 1st,
4 1964.

5 Further, that the entire powerhouse operation was dis-
6 continued on October 21st, 1967, and since then there have
7 been no jobs for powerhouse engineers.

8 MR. LEFF: Your Honor, I am prepared to stipulate to the
9 first part. I have no knowledge as to the second part and I
10 am not sure that it is relevant to the matters --

11 MR. PLANT: Well, it is relevant to this. You can claim
12 that Mr. Olson was entitled to reinstatement and that his
13 back pay kept right on running.

14 MR. LEFF: Oh, I see.

15 MR. PLANT: The fact is that they discontinued the
16 powerhouse on October 21st.

17 TRIAL EXAMINER: So that Olson, according to your
18 contention, his back pay would abort on October 21st?

19 MR. PLANT: If he is entitled to it; I think he was
20 forfeited by reason of his misconduct.

21 If I am wrong then that would be the end of his back pay
22 period.

23 TRIAL EXAMINER: October 21st, what year?

24 MR. PLANT: This year.

25 MR. LEFF: I am prepared to stipulate, without stipulating

1 whether the powerhouse disappeared or all of the engineers
2 were terminated, that Mr. Olson's job would have terminated
3 October 21st, 1967.

4 MR. PLANT: That amendment is acceptable.

5 MR. ROCHE: So stipulated.

6 MR. LEFF: So stipulated.

7 TRIAL EXAMINER: Noted and approved.

8 MR. PLANT: That finishes up the department of loose ends
9 as far as I am concerned.

10 TRIAL EXAMINER: Anything of other counsel?

11 MR. LEFF: Your Honor, you asked that decisions that will
12 be referred to be specifically introduced into evidence and I
13 have two decisions that I should like to introduce into
14 evidence.

15 They are referred to in my pretrial statement. One is
16 the Ninth Circuit decision in Fibreboard Paper Products
17 Corporation versus Bay Union of Machinists, 1965, which is
18 reported at 344 Federal Second, 300, and I have copies of the
19 decision.

20 TRIAL EXAMINER: Very well.

21 What do you propose to do with the copies?

22 MR. LEFF: I understood your Honor wanted them introduced
23 as exhibits, but whatever you wish I will just submit them to
24 convenience to do whatever you wish, sir.

25 TRIAL EXAMINER: I think that it might be preferable to

1 recess.

2 (A short recess was taken.)

3 TRIAL EXAMINER: On the record.

4 MR. LEFF: The Union will call Mr. Reihl.

5 Whereupon,

6 WILLIAM WENTLAND REIHL

7 was called as a witness by and on behalf of the Charging Party
8 and, having been first duly sworn, was examined and testified
9 as follows:

10 DIRECT EXAMINATION

11 Q. (By Mr. Leff) State your full name, please.

12 A. William Wentland Reihl, W-e-n-t-l-a-n-d, R-e-i-h-l.

13 Q. Your address?

14 A. 3048 Brookfield, California -- I mean Brookfield, Oakland
15 California.

16 Q. Were you an employee of Fibreboard prior to July 31st,
17 '59?

18 A. I was.

19 Q. And were you terminated by Fibreboard on July 31st, '59?

20 A. Yes.

21 Q. Now, referring to the seven-month period prior to then,
22 that is the part of 1959 that you worked at Fibreboard, what
23 was your assignment at that time?

24 A. I was working out of the roofing department as a machinists.
25 I was working in the roofing department itself in the

1 your termination date?

2 THE WITNESS: I was assigned to the roofing department.
3 I did machine work for the roofing department and general
4 maintenance work for the roofing department.

5 The felt mill -- well, it was in the same plant naturally
6 and I would work in the felt mill a small part of my time and
7 then at different departments.

8 Like if they had a breakdown in linoleum, and they needed
9 a big crew in linoleum, then they would pull a certain group
10 of men to work over there or insulations or synthetics or any
11 department in the plant.

12 Q. (By Mr. Plant) When you were to go to insulations, who
13 told you to go -- that you were to go to insulations?

14 A. Our direct orders would come from James Slotterbeck who
15 was the working foreman in the roofing department.

16 Q. Where would he get his orders?

17 MR. ROCHE: If you know.

18 A. His superior at that time was Mr. Cuball, if I recall,
19 and his orders would come from Mr. Maffey, I imagine,

20 Q. In other words, Mr. Maffey who ran the main overall shop
21 who determined where you were to work at any particular time
22 gave the orders, is that it?

23 A. Yes.

24 Q. By the way, the main shop was as we have referred to it
25 here, was a place where men did some of their work, but from

1 which they were also sent to other parts of the plant, right?

2 A. That's correct.

3 Q. And isn't it true that the main shop serviced really
4 all departments of the plant?

5 A. Yes.

6 Q. And the same thing, I suppose, was true of the truck
7 shop. It serviced all of the trucks from the departments of
8 the plant, is that it?

9 A. Yes.

10 MR. PLANT: No further questions.

11 REDIRECT EXAMINATION

12 Q. (By Mr. Leff) Where did you report to work in the
13 morning?

14 A. At the roofing department.

15 Q. This is during the seven months period that we spoke
16 about?

17 A. Yes.

18 Q. Mr. Reihl, since you were there, perhaps you can inform
19 me, but was there at any time that the roofing department and
20 felt mill department maintenance activities were combined?

21 A. No, I can't recall that they ever were.

22 Q. But were the felt mill and the roofing department in the
23 same building?

24 A. Well, there is a division there, but I mean it is walking
25 out of one door and going into another door and it is one big

* * *

AFTERNOON SESSION

1:40 p.m.

1 TRIAL EXAMINER SAHM: On the record.

2 MR. PLANT: Mr. Baldwin, please.

3 Whereupon,

4 ROBERT BALDWIN, JR.

5 was called as a witness by and on behalf of the Respondent
6 and, having been first duly sworn, was examined and testified
7 as follows:
8

9 DIRECT EXAMINATION

10 Q. (By Mr. Plant) Will you state your name, please?.

11 A. Robert Baldwin, Jr.

12 Q. Your residence?

13 A. 807 San Luis Road, Berkeley.

14 Q. Where do you work, Mr. Baldwin?

15 A. I work for the Citizens Federal Savings.

16 Q. Where?

17 A. In San Francisco.

18 Q. And how long have you been employed there?

19 A. Approximately three and a half years.

20 Q. Were you at some time in the past employed by Fibreboard
21 Paper Products Company?

22 A. I was.

23 Q. Corporation. Where?

24 A. At the Emeryville plant and in New Jersey, their plant
25 there.

1 Q. During what period were you employed at the Emeryville
2 plant?

3 A. Approximately January, '56 through October, '59.

4 Q. And what was your job there?

5 A. I was employment manager and later personnel manager and
6 industrial relations specialist.

7 Q. And your work had to do with personnel problems, did it?

8 A. Entirely.

9 Q. Did you in 1957 attend some meetings with various unions
10 representing personnel at that plant relative to the
11 Fibreboard retirement plan?

12 A. Yes, I did.

13 Q. There was already in existence a retirement plan, was
14 there, at the time of those meetings?

15 A. Yes, the Fibreboard part of the company had an existing
16 retirement plan.

17 Q. In other words, there has been a merger of Pabco with
18 Fibreboard and Fibreboard had an existing pension plan; is
19 that it?

20 A. That is right.

21 Q. Now, what did these meetings relate to specifically?

22 A. Well, there was at the time some of the employees at
23 Emeryville were considering coming in under the Fibreboard
24 plan and the meetings were held to inform the employees about
25 the plan.

1 Q. By the employees, do you mean the unions representing
2 the employees?

3 A. Yes.

4 Q. Now, did you attend all or virtually all of those
5 meetings?

6 A. Virtually all, to my knowledge, yes.

7 Q. And were there meetings with more than one union?

8 A. We met with all the unions.

9 Q. I am going to show you a document on a total of five
10 pages and ask you if you can identify the handwriting on that
11 document?

12 A. Yes. This is my own.

13 Q. Will you glance through all the pages?

14 TRIAL EXAMINER: Don't you believe we should have that
15 marked for identification?

16 MR. PLANT: Well, I don't want to mark the original. I
17 want to substitute copies.

18 TRIAL EXAMINER: That will be all right.

19 Let that take the identification No. Respondent's 23.

20 (The document above-referred to
21 was marked Respondent's Exhibit
No. 23 for identification.)

22 THE WITNESS: All the pages are in my handwriting.

23 Q. (By Mr. Plant) Now, who is or was Miss D. Hanson?

24 A. Miss Hanson was in charge of the insurance department at
25 the head office.

1 Q. Can you tell me when you prepared this document?

2 A. It was prepared on the 14th of August, 1957.

3 Q. Now, will you state whether or not this summarized the
4 questions raised and the answers given at those meetings?

5 A. Yes, that is what it does.

6 MR. PLANT: I will offer this document in evidence as
7 Respondent's Exhibit 23.

8 TRIAL EXAMINER: Do you prefer that I reserve ruling on
9 that until you cross-examine?

10 MR. LEFF: I would prefer that.

11 TRIAL EXAMINER: All right. I will reserve ruling on
12 it.

13 MR. PLANT: At this point I call your Honor's attention
14 to this:

15 On Page No. 2 on the page of the exhibit which is
16 numbered two, there is a question and answer No. 2 reading as
17 follows: "Can present employees defer retirement?

18 "Policy is to retire people at 65. The minimum and
19 maximum benefits are built around this. However, we can
20 expect older members to be able to work in accordance with
21 Section 17, Pages 26-27."

22 Q. (By Mr. Plant) Mr. Baldwin, at any time during those
23 negotiations, those discussions, was Local 1304 told that men
24 who were between 60 and 65 on January 1st, 1958 would be
25 entitled to work five years after that date?

1 A. Not to my knowledge, no.

2 Q. Now, did Miss Hanson have any practice with respect to
3 notifying employees, older employees who were getting along
4 toward retirement age of their retirement dates and of the
5 various options that were open to them?

6 A. Yes.

7 Q. And as far as Emeryville was concerned how did she go
8 about that?

9 A. Generally there was a routine letter sent to the
10 personnel office to my attention to be directed to the
11 concerned employee and we saw that he got it.

... 12 MR. PLANT: I have here a two-page document which I ask
13 to be marked Exhibit 24. I ask that the first page be marked
... 14 Exhibit 24(a) and the second and third pages be Exhibit 24(b).

15 (The document above-referred to
16 was marked Respondent's Exhibits
17 Nos. 24(a) and 24(b) for
identification.)

18 Q. (By Mr. Plant) Now, referring you to that first page,
19 24(a), do you recognize the signature appearing at the bottom
20 of that memorandum?

21 A. Yes.

22 Q. Whose was it?

23 A. To the best of my recollection it is Miss Hanson's.

24 Q. And the letter which was marked 24(b), whose signature is
25 at the end of that?

1 A. Miss Hanson's.

2 Q. Is this the type of letter that she was in the habit of
3 sending you to be delivered to the employee?

4 A. Yes.

5 Q. And how did you go about delivering it?

6 A. Well, if I saw the employee myself I would give it to
7 him. More commonly, I believe, it was either sent to his
8 department head within the plant or a secretary in the
9 personnel department notified the man by putting a note on
10 his timecard and asking him to come into the personnel
11 department and then she would give it to him.

12 MR. PLANT: I will offer Exhibits 24(a) and 24(b) in
13 evidence.

14 TRIAL EXAMINER: Any objection?

15 MR. ROCHE: The General Counsel has no objection.

16 MR. LEFF: I would like to cross-examine on this, your
17 Honor, before you rule on it.

18 TRIAL EXAMINER: Very well, I will defer ruling.

19 MR. PLANT: Now, the significance of this, as we go
20 along, Mr. Trial Examiner, if you will look at the first page
21 of 24(b), that is the letter which was enclosed, is addressed
22 to Mr. Florin Bennett and the first sentence reads:

23 "This is to remind you that your normal retirement date
24 is December 1, 1962 and to advise you of your privilege of
25 selecting an optional form of retirement income."

1 was called as a witness by and on behalf of the Respondent and
2 having been first duly sworn, was examined and testified as
3 follows:

4 DIRECT EXAMINATION

5 Q. (By Mr. Plant) Your name, please?

6 A. James C. Phelps.

7 Q. Your address?

8 A. 237 Round Hill Road, Tiburon, California.

9 Q. And your occupation?

10 A. I am employed in the industrial relations department of
11 Fibreboard Corporation.

12 Q. Where is your office?

13 A. 1789 Montgomery Street, San Francisco.

14 Q. And how long have you been employed by Fibreboard?

15 A. Since April, 1965.

16 Q. Now, Mr. Phelps, did you make any search of Fibreboard's
17 records or files and particularly of those files of men who
18 were between the ages of 60 and 65 on January 1st, 1958?

19 A. Yes.

20 Q. And will you state how many of those -- well, I with-
21 draw that.

22 Will you state what you found?

23 A. I found three cases of people who had been between the
24 ages of 60 and 65 on their unit effective date which was either

25

1 January 1st, 1958 or in the case of one plant, February 1st,
2 1958.

3 MR. PLANT: I have here what purports to be a letter or
4 a copy of a letter dated November 20, 1961, addressed to Mr.
5 Joseph Freitas, Emeryville Division.

6 I will ask that it be marked for identification as
7 Respondent's Exhibit 25.

8 TRIAL EXAMINER: Now, how would you identify that?

9 MR. PLANT: It is a letter addressed to Mr. Joseph
10 Freitas under date of November 20th, 1961, purporting to be
11 signed by D. Hanson, Dorothy Hanson.

12 (The document above-referred to
13 was marked Respondent's Exhibit
No. 25 for identification.)

14 Q. (By Mr. Plant) Showing you Exhibit 25, Mr. Phelps, was
15 that one of the files which you reviewed, that of Mr. Joseph
16 Freitas?

17 A. Yes.

18 Q. And did you find the documents which I have just shown
19 you in that file?

20 A. Yes, it was in the pension file of Joseph Freitas in the
21 employee insurance department.

22 Q. Now, what bargaining unit was Mr. Freitas; what union was
23 he represented by?

24 A. He was a member of the bargaining unit represented by
25 Local 1101 of the Paint Makers Union at Emeryville.

Q. And what was the unit date of that?

1 A. January 1, 1958.

2 Q. The same as for the machinists?

3 A. The same as for 1304.

4 Q. Now, Mr. Freitas was over the age of 60 on January 1st,
5 '58, but under the age of 65; is that correct?

6 A. That is right.

7 Q. Can you tell me whether -- when Mr. Freitas, in fact,
8 retired?

9 A. I can by referring to his file if I may.

10 Q. Yes, would you please.

11 A. He retired March 1, 1962.

12 Q. In other words, he took early retirement?

13 A. He took retirement for his before his compulsory
14 retirement date but he was over 65 and therefore, it is
15 considered normal retirement.

16 TRIAL EXAMINER: Do I understand that he was a member of
17 the Brotherhood of Painters?

18 THE WITNESS: I think it is 1101 of the Paint Makers
19 Union which is affiliated with the Brotherhood of Painters.

20 TRIAL EXAMINER: I notice here -- is this one of the
21 unions that associated itself with the retirement plan on
22 January 1, 1958?

23 THE WITNESS: Yes, it is.

24 TRIAL EXAMINER: I see here Costa County's Brotherhood
25 of Painters and Decorators of America; is that it?

1 TRIAL EXAMINER: Now, I don't believe I did rule on the
2 admissibility of 25.

3 I believe that the counsel for the union and the govern-
4 ment stated that they don't see the materiality of the letter
5 but since I am only passing on the admissibility at this time
6 and not the probative value, if any, until I have had an
7 opportunity to read the complete record, I assume that then
8 there is no objection.

9 Very well, in the absence of any response from counsel
10 to the contrary, Respondent's 25 will be received in evidence.

11 (The document above-referred to,
12 heretofore marked Respondent's
13 Exhibit No. 25, was received in
14 evidence.)

15 MR. PLANT: Now, I ask that there be marked as Respondent's
16 26 for identification, a letter dated February 28th, or rather
17 a copy of a letter dated February 28th, relative to --

18 TRIAL EXAMINER: What year?

19 MR. PLANT: 1961, relative to Floyd Turner.

20 (The document above-referred to
21 was marked Respondent's Exhibit
22 No. 26 for identification.)

23 Q. (By Mr. Plant) Now, did you come across Exhibit 26 for
24 identification in Mr. Turner's file?

25 A. Yes, I found it in his personal pension file.

Q. And what bargaining unit was Mr. Turner in?

A. He was a member of the bargaining unit represented by

1 Local 303 of the Pulp, Sulphite and Paper Mill Workers at the
2 South Gate gypsum plant.

3 Q. What was their unit effective date?

4 A. February 1, 1958.

5 Q. February rather than January?

6 A. Right.

7 Q. Now, on February 1, '58, what was Mr. Turner's age?

8 A. His date of birth was May 30th, 1897, so he would have
9 been 61 -- no, he would have been 60.

10 Q. And obviously he was not yet 65?

11 A. Right.

12 Q. Can you tell me when Mr. Turner, in fact, retired?

13 A. He retired on June 1, 1962.

14 Q. The date set forth in this letter, is that correct?

15 A. Yes.

16 MR. PLANT: I will offer the letter in evidence as
17 Respondent's Exhibit 26.

18 TRIAL EXAMINER: Any objection?

19 MR. ROCHE: The General Counsel has the same objection
20 to materiality.

21 MR. LEFF: The Union joins in that.

22 TRIAL EXAMINER: Very well, I gather that you have no
23 objection to its receipt as I am only passing on its
24 admissibility, so Respondent's 26 will be received in
25 evidence.

(The document above-referred to, heretofore marked Respondent's Exhibit No. 26, was received in evidence.)

MR. PLANT: This letter, incidentally, gives June 1st, 1962 as Mr. Turner's compulsory retirement date.

Q. (By Mr. Plant) Did you find one other who fell in the category of people that you have mentioned and who was that?

A. That was William B. Nash.

MR. PLANT: I have here a letter dated February 16, 1962, relative to William Nash, which I asked to be marked Respondent's 27 for identification.

(The document above-referred to was marked Respondent's Exhibit No. 27 for identification.)

Q. (By Mr. Plant) Did you find Exhibit 27 in Mr. Nash's file?

A. Yes, I did.

Q. Now, what bargaining unit did Mr. Nash belong to?

A. He was also a member of the bargaining unit represented by Local 303 of the Pulp, Sulphite and Paper Mill Workers at the South Gate gypsum plant.

Q. And this unit's effective date was?

A. February 1, 1958.

Q. And on that date, do you know how old Mr. Nash was?

A. His date of birth was July, 19th, 1896, so he would have been 61, I guess.

1 Q. Now, can you tell me when Mr. Nash, in fact, retired?

2 A. Mr. Nash took optional earlier retirement and retired on
3 April 1, 1962.

4 MR. PLANT: I will offer Exhibit 27 for identification in
5 evidence as Exhibit 27.

6 MR. ROCHE: The General Counsel has no objection to
7 authenticity but objects as before on materiality.

8 MR. LEFF: The Union joins in that statement.

9 TRIAL EXAMINER: 27 will be received in evidence.

10 (The document above-referred to
11 heretofore marked Respondent's
12 Exhibit No. 27, was received in
evidence.)

13 Q. (By Mr. Plant) Now, that letter to Mr. Bennett, did you
14 find that in his personal file?

15 A. No, I did not.

16 Q. Where did you find that?

17 A. I found it in a group of loose -- I called them
18 miscellaneous papers that were stuck in the file of the
19 employee insurance department behind a heading which I think
20 said, Emeryville plant.

21 Q. You couldn't find letters to any of these other men?

22 A. No, I could not.

23 Q. Do you know whether letters were written to the other men
24 before their termination on August 1st, 1959?

25 A. No, I have no knowledge of it.

* * *

1 can identify that?

2 A. I have seen it before.

3 Q. Where did you see it?

4 A. I have seen it in our files.

5 Q. Were you present in the 1965 negotiations with Local
6 1304?

7 A. Subsequent to about April 12, 1965, I was.

8 Q. While you were present, was this on the table at any time
9 or do you have any knowledge of its use or reference to it in
10 the negotiations?

11 A. I have no knowledge of its use nor do I recall any
12 reference to it.

13 Q. Mr. Phelps, I refer you to the second page, the bottom.
14 There is a stamp that says, "Budgets and analysis,
15 Brannon Street," the date, 1-13-65 and an initial that looks
16 like D.C. or D.L.B.

17 Can you identify that?

18 MR. PLANT: Mr. Leff, I have the witness who prepared
19 that and who I intend to put on.

20 MR. LEFF: Thank you, Mr. Plant.

21 Q. (By Mr. Leff) Can you identify that in any way?

22 A. Yes. I believe that is the initial of Donald L. Blinco.

23 Q. Can you recall what file you saw this in?

24 A. I saw it in a file that related to the negotiations with
25 1304 and also the matter of the return of the 1304 employees

1 to employment.

2 MR. LEFF: No further questions, your Honor.

3 TRIAL EXAMINER: Anything further?

4 MR. ROCHE: Nothing further, from the General Counsel.

5 MR. PLANT: That is all.

6 TRIAL EXAMINER: You are excused.

7 Thank you.

8 (Witness excused.)

9 MR. PLANT: Now, Mr. Blinco.

10 Whereupon,

11 DONALD L. BLINCO

12 was called as a witness by and on behalf of the Respondent and
13 having been first duly sworn, was examined and testified as
14 follows:

15 DIRECT EXAMINATION

16 Q. (By Mr. Plant) State your name, please.

17 A. Donald L. Blinco, B-l-i-n-c-o.

18 Q. And what is your occupation, Mr. Blinco?

19 A. I am a senior analyst with Fibreboard Corporation.

20 Q. You live here in San Francisco?

21 A. I live at 5 Sausalito Boulevard, Sausalito.

22 Q. And where do you work?

23 A. Fibreboard Corporation, Brannon Street.

24 Q. San Francisco?

25 A. San Francisco.

1 Q. When were you employed by Fibreboard, originally?

2 A. I was employed by Fibreboard in November, 1964.

3 Q. That is when you first went to work for them?

4 A. Yes.

5 Q. And what was your employment in January, 1965?

6 A. I was senior analyst for the corporate planning depart-
7 ment at Brannon Street, San Francisco.

8 Q. Now, I am going to show you the original of a schedule
9 which has been marked Union's Exhibit 16.

10 TRIAL EXAMINER: Is that the 16 which we received in
11 evidence?

12 MR. PLANT: Yes.

13 TRIAL EXAMINER: That was Union's Exhibit, as I recall,
14 am I correct?

15 MR. PLANT: Yes.

16 TRIAL EXAMINER: Union's Exhibit 16.

17 MR. PLANT: Yes.

18 TRIAL EXAMINER: That is a tabulation.

19 MR. PLANT: Yes, it is the exhibit that Mr. Leff just
20 showed Mr. Phelps.

21 Q. (By Mr. Plant) Do you recognize Union's Exhibit 16?

22 A. I do.

23 Q. Who made that, do you know?

24 A. I prepared the schedule.

25 Q. That is your writing, is it?

1 Q. Now, will you state what occasioned your preparation of
2 that schedule?

3 A. A telephone call from you to my immediate superior, Mr.
4 Hedrick.

5 Mr. Hedrick was out of the office so I in turn took the
6 telephone call as this particular work, project, had been
7 turned over to me by Mr. Hedrick.

8 Q. Had you been engaged in the preparation of various other
9 types of schedules in connection with this back pay problem?

10 A. Yes, I had.

11 Q. And you got a phone call from me in which I asked for
12 what?

13 A. For retirement plan dates, retirement dates.

14 Q. And you then proceeded to prepare that schedule which you
15 have before you?

16 A. Yes, I did.

17 Q. Where did you get the information which appears on that
18 schedule?

19 A. Well, we had a file in the office that had a collection of
20 the information to that date and I went to that particular
21 file.

22 Q. Collection of what information?

23 A. Of the information regarding the Emeryville 1304.

24 Q. You mean information relative to this back pay problem?

25 A. To the back pay problem, yes, sir.

1 Q. And did you find in that file anything relative to
2 retirement dates?

3 A. Yes, I found one schedule.

4 MR. PLANT: I have here a document the first page of which
5 is entitled, "Maximum labor costs, crafts at Emeryville, " of
6 which I will ask to be marked as Exhibit 28, Respondent's
7 Exhibit 28, for identification.

8 (The document above-referred to
9 was marked Respondent's Exhibit
No. 28 for identification.)

10 Q. (By Mr. Plant) I will refer you to Respondent's 28 for
11 identification, Mr. Blinco, and ask you if that is the
12 document which you just mentioned having found in that file?

13 A. Yes, this is the document that I found in the file.

14 Q. Do you know by whom that had been prepared?

15 A. Yes, by Mr. Charles Patzke.

16 Q. And who is he?

17 A. Mr. Patzke was senior analyst in the corporate planning
18 department prior to my coming to work for Fibreboard.

19 Q. And was he still at Brannon Street?

20 A. No, he was not.

21 Q. Where was he?

22 A. He was transferred to the southern packaging division of
23 Fibreboard in Los Angeles.

24 Q. That was before you came?

25 A. Yes.

1 Q. Now, was it from this that you prepared the schedule which
2 has been marked Union's Exhibit 16?

3 A. Yes. I used the data from this schedule to prepare my
4 schedule.

5 Q. And I notice that that schedule which has been marked
6 Exhibit 20 does not set forth any birth dates or retirement
7 dates except for the actual retirement date of August 1st, '59,
8 in the case of those people who retired then, is that correct?

9 A. That is correct.

10 Q. Were you familiar with the Fibreboard pension plan?

11 A. I was not.

12 Q. Had you ever read it?

13 A. No, I had never read it nor seen it.

14 Q. Did you read it before preparing Union's Exhibit 16?

15 A. I did not.

16 Q. Now, after preparing Union's Exhibit 16, what did you do
17 with it?

18 A. I mailed a copy of it to your office and I also gave a copy
19 to Mr. Thumann.

20 MR. PLANT: I will ask that Respondent's Exhibit 28 be
21 received in evidence.

22 TRIAL EXAMINER: Any objection?

23 MR. LEFF: Yes, your Honor, I object to this.

24 I have no opportunity to cross-examine the man who prepared
25 it. I don't know where the data came from.

1 TRIAL EXAMINER: Very well. I will reserve ruling.

2 MR. PLANT: I may say, your Honor, it doesn't matter who
3 prepared it. This was the source of Mr. Blinco's information.

4 You may cross-examine.

5 MR. ROCHE: Could we have a minute or two, your Honor?

6 TRIAL EXAMINER: Very well.

7 Off the record.

8 (Discussion off the record.)

9 TRIAL EXAMINER: Let's take 10-minutes and be back here at
10 10 of 3:00.

11 (A short recess was taken.)

12 TRIAL EXAMINER: On the record.

13 CROSS-EXAMINATION

14 Q. (By Mr. Leff) Mr. Blinco, I have put in front of you
15 Union's Exhibit No. 16 and Respondent's No. 28, for identification,
16 and I wonder if you could explain to me the process by which
17 you got from Respondent's Exhibit No. 28 to the compulsory
18 retirement dates given in Union's Exhibit No. 16?

19 A. Well, I took one of the periods of time from Exhibit 28.

20 For example, I took the age at 8-1-59 and updated or in
21 this case, I used the last date age at 7-1-63 and updated that
22 date to 1-1-65.

23 I just added the number of months from 7-1-63 to 1-1-65
24 from the age shown on this schedule.

25 Q. Well, let's take --

1 A. And in that way I arrived at the mandatory retirement age
2 date from this schedule to check it out against the schedule that
3 I prepared and the two, you see, do check out.

4 Q. Well, let me ask you this: How much of Respondent's
5 Exhibit 28 was done by you and how much was done by your
6 predecessor?

7 A. 28?

8 Q. Yes.

9 A. No. 28 was all done by my predecessor.

10 Q. So all the data on that you had in front of you?

11 A. I had in front of me.

12 Q. Now, let's take Mr. Bennett, for example.

13 TRIAL EXAMINER: Just one moment. Is there an extra copy
14 here I can follow?

15 THE REPORTER: Yes, sir.

16 Q. (By Mr. Leff) Mr. Bennett is No. 9 on the bottom part of
17 Union's Exhibit 16 and this shows compulsory retirement.

18 No. 9, F. F. Bennett, that is the bottom part of the first
19 page of Union's 16. As you read that across you have age at
20 1-1-65. I take it that is 70 years, one month and --

21 A. Yes.

22 Q. And compulsory retirement age 68 years and one month.
23 Compulsory retirement date 1-1-65.

24 A. Yes.

25 Q. Now, could you tell me where, from Respondent's 28, that date

1 came or that information came?

2 A. On Exhibit No. 28 under Bennett, it shows a retirement
3 date of 68 years, one month.

4 Q. Did you just take that date?

5 A. I took that date.

6 Q. I see.

7 A. And then backed that date up to August or to January 1st,
8 1965; on the basis of what his age was in this case I had to go
9 over a column to 9-13-62 and so on 1-1-65 he would be 70 years
10 and one month.

11 Therefore, if his retirement date shown on this schedule
12 which I just followed was 68 years and onemonth, well, from
13 1-1-65, and that is an even two years, then I used 1-1-63.

14 So I went by the retirement date shown on this schedule
15 prepared by Mr. Patzke.

16 Q. Now, the mandatory retirement age that is given in
17 Respondent's 28, do you have any idea how that was established?

18 A. I have no idea because I was not there.

19 Q. Well, I believe that there was a stipulation as to Mr. Bennett's
20 birthdate.

21 Now, Mr. Blinco, it has been stipulated that Mr. Bennett's
22 birth date was November 10th, 1894. Now, if his mandatory
23 retirement age is 68 years and one month, then I wonder if you
24 could tell me the date that he reaches that age if his birth
25 date is November 10th, 1894?

1 At the time that I prepared this schedule, from this
2 schedule I had no birth dates.

4 3 Q. Well, I am trying to find out where an error crept in if
4 it did, and that is why I am trying to find out what, if
5 anything, in Respondent's 28 was correct or incorrect.

6 I don't understand the process by which you arrived at
7 1-1-63 as a retirement date and how that worked out to be
8 different than the retirement dates that the company is
9 contending for and it is that difference that I just don't
10 understand how it was arrived at by whatever you did.

11 A. Well, by what I did, was strictly mathematical. I think
12 you can see I was strictly mathematical based on this particular
13 schedule which was made by Mr. Patzke in 1963.

14 Q. Well, I think it has no doubt been explained to you that
15 the company understands that there were different compulsory
16 retirement dates than January 1st, '63, that was arrived.

17 A. I understand that from today hearing it.

18 Q. Have you at all explored how it happened that you got a
19 different date than the ones the company is contending for?

20 A. Well, I have never read the retirement plan, number one,
21 at the time that this was prepared.

22 Q. Well, then, somebody computed a mandatory retirement age
23 and wrote it on Respondent's Exhibit 28; is that right?

24 A. It appears here, yes.

25 Q. Whoever did that must have had some basis of putting it

1 down, isn't that likely?

2 A. Well, I couldn't say.

3 Q. In any case, somebody did put down a mandatory retirement
4 age on this plan which states that Florin Bennett's mandatory
5 retirement age, for example, is 68 years, one month?

6 A. That is the way it reads.

7 Q. And that was done by your predecessor?

8 A. Yes.

9 MR. LEFF: No further questions, your Honor.

10 REDIRECT EXAMINATION

11 Q. (By Mr. Plant) Let me ask you this, if you will look at
12 the first name on that schedule prepared by your predecessor,
13 John Aiello, and the first figure there under August 1st, 1959
14 is 39 years and two months.

15 In preparing your sheet did you assume that that two months
16 included the month in which he became 39 or was exclusive of
17 the month in which he became 39?

18 A. I assume that it did not include the year or the month in
19 which he had his birth -- the month in which he had his birth
20 date was not included.

21 Q. By the way, in preparing that, did you talk to anybody in
22 the insurance department?

23 A. I did not.

24 Q. And I take it that Mr. -- what was his name, your predecessor?

25 A. Patzke.

1 Q. He was not connected with the insurance department, was he?

2 A. No, he was not.

3 He was in Los Angeles.

4 Q. Well, when he was here he was not connected?

5 A. No, he was in the corporate planning department.

6 MR. PLANT: I have no further questions.

7 MR. ROCHE: I just have a question or two.

8 RECROSS-EXAMINATION

9 Q. (By Mr. Roche) I may be missing something here but I
10 want the record to be clear and I want it to be clear in my
11 own mind, Mr. Blinco.

12 Calling your attention to Mr. Florin Bennett again, will
13 you tell us how you arrived at a date of 1-1-63 from the data
14 that was before you on Respondent's Exhibit No. 28?

15 MR. PLANT: He has been asked that question.

16 MR. ROCHE: I couldn't understand the answer, myself.

17 A. If I can find Bennett here.

18 From 9-13-62 --

19 TRIAL EXAMINER: 9-13-62?

20 THE WITNESS: Yes.

21 TRIAL EXAMINER: Now, why is that a relevant date?

22 THE WITNESS: I used the age at 7-1-63 but in his case
23 there was nothing shown in the schedule.

24 You can use any one of the age brackets here and in this
25 case I used 9-13-62.

1 TRIAL EXAMINER: That is the beginning of the back pay
2 period.

3 THE WITNESS: Yes, that just happens to be the beginning of
4 the back pay period.

5 TRIAL EXAMINER: You mean that is a coincidence?

6 THE WITNESS: That is the age we put down in this particular
7 column.

8 He used three different date periods, 8-1-59, 9-13-62 and
9 7-1-63.

10 TRIAL EXAMINER: Well, 8-1-59 strikes a responsive chord
11 with me; 9-13-62 strikes a responsive chord with me.

12 What does 7-1-63 indicate?

13 MR. PLANT: I think that I can answer that for you, your
14 Honor.

15 TRIAL EXAMINER: I wish you would.

16 MR. PLANT: This document was prepared for the purpose of
17 enabling Fibreboard to have some idea of what its maximum
18 liability might be for back pay and the date selected was what
19 would the back pay amount to from September 13, '62 to July
20 1st, '63.

21 You will see over here on this page --

22 TRIAL EXAMINER: But July 1st, '63 --

23 MR. PLANT: Well, that is when this was prepared.

24 TRIAL EXAMINER: That is when this was prepared?

25 MR. PLANT: Yes.

1 TRIAL EXAMINER: Well, nobody ever said that. You see,
2 you people worked with this so long you feel everybody else
3 understands these things.

4 You see you have been working with it for years.

5 You go ahead, Mr. Roche.

6 MR. PLANT: The date on it is July 16th, 1963 and they took
7 the back pay liability up to the first of the month, the
8 maximum possible liability just for their own information.

9 Q. (By Mr. Roche) Would you continue on Mr. Bennett?

10 A. Yes.

11 Q. You took the figure 61 years and 9 months?

12 A. And from 9-13-62 to 1-1-65 would be three years and four
13 months.

14 Q. So you added three years and four months?

15 A. Which gave him an age at 1-1-65 of 70, one month, so then
16 I went back to this sheet and it showed a mandatory retirement
17 date of 68 and one month, so that is exactly two years and two
18 years from 1-1-65 is 1-1-63.

19 This was the mathematical calculation that I made.

20 Q. Now, could you tell me why you took the periods from 9-13-
21 62 until January 1, 1965?

22 A. At the particular time that I was asked to prepare this
23 schedule, which we call No. 16, was in January of 1965.

24 Therefore, I base it on the age at 1-1-65. I could have
25 used the age at 8-1-59 and I could have come up with exactly

1 the same answer on Exhibit 16, the same identical answer
2 regardless of what base period you use.

3 Q. I see. If you had used the age at 8-1-59, you could have
4 taken the period of time between 8-1-59 and January 1, 1965?

5 A. Yes, sir.

6 MR. ROCHE: I think that is a little clearer to me. I
7 hope I still understand it when I read the transcript.

8 MR. PLANT: Just remember, Mr. Roche, that the witness in
9 figuring when he saw one year or 39 years and two months took
10 these to be the two months following the year in which the man
11 reached 39 -- following the month in which the man reached 39.

12 MR. ROCHE: Since the copies of Respondent's Exhibit No.
13 28 are not complete at the bottom of the first page, if no one
14 has any objection, I would like to read that note into the
15 record.

16 MR. PLANT: Go ahead.

17 TRIAL EXAMINER: Well, I think that there shouldn't be
18 exhibits in here -- this is going to be vitally important as I
19 see, not only for myself but anybody else here.

20 We should have the complete transcript. I don't see reading
21 it in. I don't think it is precise; I don't think it is
22 complete; I don't think it is lawyer like.

23 Let's have an exhibit here that reflects what the original
24 reflects.

25 MR. PLANT: Unfortunately in duplicating this that note

1 was cut short.

2 TRIAL EXAMINER: Very often in Xeroxing these originals
3 you get a very bad Xerox copy. I want them to be certain that
4 there is no question of legibility.

5 MR. ROCHE: I would like to state that all pages of my
6 copy of Respondent's No. 28 are illegible in one respect or
7 another.

8 I would volunteer to make copies on our machine, Mr.
9 Plant. I think we can make a clearer copy than you have
10 furnished us of Exhibit 28.

11 MR. PLANT: Would you do that and put the two in evidence
12 and physically withdraw the two I put in and replace them with
13 the two that you make?

14 MR. ROCHE: I will be glad to do so.

15 MR. PLANT: And that will make that note whole.

16 MR. ROCHE: If your Honor, please, General Counsel has
17 another reason for wanting to read that footnote into the
18 record.

19 Clearer copies will go in but just so all parties understand
20 I would like to attempt to read it into the record with Mr.
21 Plant's assistance.

22 The date is 8-15-63. Initials, R. C. T., Standing for Mr.
23 Thumann, reports that 80 per cent of men have reported to
24 NLRB in -- and eight are working on and off and others are
25 earning high rates.

R.C.T., estimates liability at -- and what appears to be \$60, M at 7-1-63.

Q. (By Mr. Leff) Mr. Blinco, I wonder after this last series of questions, am I correct in understanding that what really determined the retirement date is the information in the column on Respondent's 28 headed "mandatory retirement age," is that not right?

A. That is correct.

Q. And that was prepared by your predecessor?

A. Yes it was.

Q. You have no idea how he arrived at that?

A. I do not.

MR. LEFF: Your honor, you have reserved your ruling on Respondent's 28 and this was prepared by somebody who isn't before us to cross-examine and the critical issue is how did he arrive at that mandatory retirement age and we are not really yet able to determine how he did and I would object to the admission of this.

MR. PLANT: I will submit the document in evidence, your Honor.

TRIAL EXAMINER: Now, I would like the witness to take me through this step by step.

Counsel is so familiar with it that they ask questions which might be characterized as esoteric. Mine will be very elementary.

1 Q. (By Trial Examiner) Let us assume that it was stipulated
2 that Bennett was born November the 10th, 1894.

3 Take it through step by step so that I can understand how
4 it arrives at in his case that he was due for mandatory retire-
5 ment on 7-1-63 -- was it -- July 1, '63?

6 MR. ROOPE: January 1, '63, sir.

7 TRIAL EXAMINER: January 1, '63.

8 A. Well, your Honor, I didn't work from birth dates. I
9 worked from Exhibit 28. Therefore, I can only take you through
10 how I calculated from Exhibit 28.

11 Q. (By Trial Examiner) Well, does 28 parse with the fact
12 that it was stipulated he was born on November 10th, 1894?

13 A. Yes.

14 Q. If you say his age, for instance, at 8-1-59 was 64-8, I
15 gather that is 64 years and eight months; is that correct?

16 A. That is correct.

17 Q. Now, does that parse with going back to November 10th,
18 1894 as his birthdate?

19 A. What was the date?

20 Q. November 10, 1894.

21 A. That is correct.

22 Q. That is correct?

23 A. On November 11th, 1900 he would be 6 and 60 more years he
24 will be 64 years, eight months, but not counting November, the
25 month of November in 1894.

Q. You exclude the first month, the month of his birth?

A. This is what I presumed that the gentleman who prepared this schedule had done.

Q. So on August 1st, 1959, he was 64 years and eight months?

A. Yes.

Q. Now, project that 64-8 in terms of actual dates. That would be on August 1st, 1959, he was 64 years and eight months. Now, the retirement age is 65, is that correct?

MR. LEFF: Your Honor, the retirement age given in this exhibit is 68 years and one month. This is because this was a man who was over 60 but under 65 as of January 1st, 1958.

TRIAL EXAMINER: That is right, but the mandatory retirement age was 65, was it not?

MR. LEFF: No, sir, it was, we claim, five years after January 1st, '68.

TRIAL EXAMINER: What I am trying to do now is I am trying to figure out aside from what your contention is about the oral agreement, taking that aside for the moment, we will get to that later on.

It is contended therefore that he had to retire on January 1st, 1963; isn't that correct?

MR. LEFF: Well, your Honor, if you take the difference between 64 years and eight months on August 1st, '59 and 68 years and one month, the given mandatory retirement age, I believe that that correctly comes out to January 1st, 1963.

1 TRIAL EXAMINER: Read that back to me, Mr. Reporter.

2 (Record read.)

3 TRIAL EXAMINER: Well, then, that is evidently the way the
4 company computed it.

5 MR. PLANT: That is the way this man computed it from those
6 figures.

7 MR. LEFF: That, really your Honor, raises the question as
8 to how the person who prepared this chart arrived at the
9 mandatory retirement age because I contend that he correctly
10 arrived at a mandatory retirement age.

11 MR. PLANT: Your Honor, the trouble was that this exhibit
12 was prepared for the purpose I have stated of computing back
13 pay.

14 The man who prepared it wasn't very much interested in
15 exact retirement dates. He was interested in determining who
16 would have been required to retire prior to a certain date and
17 that is all he was trying to figure, as you will see on the
18 first page.

19 MR. LEFF: The curious thing is, your Honor, that in the
20 case of just the ones that we contend that the date is January
21 1st, 1963, he happens to have arrived at that.

22 TRIAL EXAMINER: Well, on the first page they have maximum
23 number as of July 1, 1963, maximum cost.

24 In other words, this was prepared as of July 1, 1963.

25 MR. PLANT: Yes.

TRIAL EXAMINER: Do you have set out somewhere exhibits, contentions or so on the dates that you contend that -- there are seven, isn't there?

MR. LEFF: Your Honor, there is actually eight. There was one man who is not entitled to back pay but there will be an issue as to his retirement and that is Mr. Albert R. Bergstrom whose job was eliminated as far as back pay was concerned.

MR. PLANT: Your Honor, the compulsory retirement dates, in accordance with the plan and not any alleged oral agreement are set forth in Schedule 1 of the appendix to our amended complaint -- to our amended answer.

TRIAL EXAMINER: Now, you don't take objection to those retirement dates in the abstract, absent your oral agreement?

MR. LEFF: There is just one, your Honor, that I think we stipulated that one should be February 1st, rather than January 1st.

MR. PLANT: Well, we made the stipulation.

TRIAL EXAMINER: And, of course, with you there is no question at all.

Now, where do you set forth the mandatory retirement dates of these men?

MR. LEFF: It is set forth in the General Counsel's Exhibit No. 2, I believe, your Honor.

TRIAL EXAMINER: That is the chart of employees and the benefits received.

1 MR. LEFF: It shows the period of continuous service for
2 crediting pension benefits and the period of back pay
3 eligibility and indicates the dates that we agree that it
4 ended which was the compulsory retirement date.

5 TRIAL EXAMINER: Which date, of course, is different for
6 each person.

7 MR. LEFF: That is right, and we have listed the ones
8 that we claim are the compulsory retirement dates of January
9 1st, '63.

10 TRIAL EXAMINER: And that is based upon your contention
11 that they could get in five years from the time the plan went
12 into effect?

13 MR. LEFF: That is correct, your Honor.

14 MR. ROCHE: General Counsel would like to comment on Mr.
15 Plant's comment.

16 MR. PLANT: Well, can't we get rid of the witnesses and
17 then if we have any argument --

18 MR. ROCHE: I would like to finish one sentence, Mr.
19 Trial Examiner, because it is on point.

20 TRIAL EXAMINER: All right.

21 MR. ROCHE: Mr. Plant commented that apparently the
22 individual, Mr. Patzke, who prepared Respondent's 28 was not
23 very interested in retirement dates and General Counsel would
24 submit that Respondent's 28 shows the work of a precise and a
25 careful and a thorough individual and that his information with

1 respect to retirement dates of Bennett and the other six or
2 seven employees probably came from some authoritative source in
3 the company records.

4 TRIAL EXAMINER: Very well, anything further?

5 MR. ROCHE: Nothing further from the General Counsel.

6 MR. LEFF: No further questions, your Honor.

7 TRIAL EXAMINER: You are excused.

8 Thank you.

9 (Witness excused.)

10 MR. LEFF: Your Honor, your ruling on Exhibit 28 is still
11 pending.

12 TRIAL EXAMINER: Yes, I am going to get to that. I am
13 going to overrule the objections and receive Respondent's 28
14 in evidence.

15 (The document above-referred to,
16 heretofore marked Respondent's
17 Exhibit No. 28, was received in
evidence.)

18 MR. PLANT: Now, may I have a stipulation, namely that
19 Schedule A to Union's Exhibit 17 was prepared by me or under
20 my direction from Union's Exhibit 16, namely the schedule which
21 Mr. Blinco sent me?

22 MR. LEFF: We will so stipulate.

23 MR. ROCHE: So stipulated.

24 TRIAL EXAMINER: Noted and approved.

25 MR. PLANT: May it be further stipulated that I have

1 the Fibreboard pension plan?

2 MR. ROCHE: I will accept your representation, Mr. Plant
3 and I will so stipulate.

4 MR. LEFF: I will stipulate also.

5 MR. PLANT: Now, Mr. Thumann, would you take the stand,
6 please.

7 TRIAL EXAMINER: The witness has been sworn.

8 Whereupon,

9 R. C. THUMANN

10 resumed the stand as a witness for and on behalf of Respondent,
11 having been previously duly sworn, testified further as follows:

12 MR. PLANT: Mr. Thumann, I believe has previously been
13 sworn and identified himself.

14 DIRECT EXAMINATION

15 Q. (By Mr. Plant) I am going to direct your attention first,
16 Mr. Thumann, to the meetings regarding pension plans which
17 took place with various unions in 1957.

18 Did you attend all of those meetings?

19 A. I did.

20 Q. And was it you who did the talking on behalf of the company?

21 A. I did.

22 Q. Now, just how did you go about going through this plan
23 with these unions; did you have a regular format that you
24 followed?

25 A. Yes, after a short introduction about the pension plan and

1 how it was the company's pension plan, I presented enough
2 copies to each one of the representatives of the various
3 unions in separate meetings that I had with the unions of the
4 plan itself.

5 I went through the first part of the plan as a series of
6 questions and answers. I went through those questions and
7 answers so as to properly lay the groundwork for more detailed
8 discussion of the pension plan itself.

9 One of the questions asked was about when do you retire.
10 The normal retirement date is on 8-8-65, and then it says .
11 Section 17 and at that period I turned over to Section 17
12 itself and read Section 17 and pointed out that as far as these
13 unions were concerned that where the eligibility dates of the
14 prior grouping of September 1945 was expressed in Section 17,
15 that would be revised or amended so that the eligibility date
16 would be the correct one for the particular union which was
17 1-1-58.

18 Q. Now, did you give that explanation to Local 1304?

19 A. I did.

20 Q. Did you at any time tell any of the unions that a man who
21 on January 1st, '58 was between the ages of 60 and 65 would have
22 five years after January '58 before he would be required to
23 retire?

24 A. I did not.

25 Q. Did you say anything to that effect?

1 A. I did not.

2 MR. PLANT: I have here a letter dated December 4th, 1957
3 addressed to the attention of Mr. Thumann by Mr. Ferber which
4 I will ask to be marked Respondent's 29.

5 (The document above-referred to
6 was marked Respondent's Exhibit
No. 29 for identification.)

7 TRIAL EXAMINER: Now, what again, is that?

8 MR. PLANT: It is a letter from Ferber to Thumann dated
9 December 4th, '57.

10 Q. (By Mr. Plant) I will show you the original of that
11 letter, Mr. Thumann, and ask if you received through the mail?

12 A. Yes, I did.

13 Q. Are you familiar with Mr. Ferber's signature?

14 A. Yes, I am.

15 Q. Is that his signature?

16 A. That is it.

17 Q. Do you know when it was received?

18 A. It was received on December 5, 1957, in the industrial
19 relations department.

20 MR. PLANT: I will offer 29 in evidence as 29.

21 MR. ROCHE: No objection.

22 MR. LEFF: No objection.

23 TRIAL EXAMINER: It will be received.

24 (The document above-referred to,
25 heretofore marked Respondent's
Exhibit No. 29, was received in
evidence.)

1 Q. (By Mr. Plant) Now, I am going to turn to the contract
2 negotiations between Fibreboard and East Bay Union of
3 Machinists during the years immediately prior to 1959.

4 Did you conduct those negotiations on behalf of Fibreboard?

5 A. I did.

6 Q. During the course of those negotiations did you at any
7 time bring up the matter of wage cost?

8 A. Yes.

9 Q. Did you do so in 1958?

10 A. Yes.

11 Q. What did you say?

12 A. I pointed out to the union in 1958 that I had been talking
13 with them for some several years about the extreme cost that
14 we were having as far as the maintenance contract was concerned.

15 I reminded them that the cost which consisted of wages and
16 all fringe items, that unless something was done about it we
17 would have to do something about it.

18 Q. Now, did you limit your objection to the wage cost only
19 to the cost other than those involved in the wage rate?

20 A. No, sir, it was the entire thing that I took care of, the
21 hourly rate of pay, the cost of vacations, the cost of
22 holidays, the cost of shift differentials, over-time, over-time
23 Sunday, as such and so forth.

24 Q. Turning now toward another subject, in 1959, the ILWU
25 Millwrights' rate was not increased; is that correct?

1 A. That is correct.

2 Q. And that was true even though other personnel represented
3 by the ILWU did receive wage increases?

4 A. That is right.

5 Q. Was the same thing true in 1960?

6 A. That is right.

7 Q. Well, now, was that the result of negotiations with the
8 ILWU?

9 A. No, it was as a result of the position that I took but
10 the wage rate was entirely too high and that we should not
11 make any more increases in those particular classifications,
12 by that I mean the Millwrights in the felt mill and I maintain
13 that position until the latter part of 1961.

14 Q. Well, now, you say it wasn't the results of negotiations.

15 You maintained that position with whom?

16 A. With the stewards who called it to my attention and I don't
17 recall whether Mr. Burke called it to my attention or not,
18 William Burke.

19 TRIAL EXAMINER: Who is he?

20 THE WITNESS: Right back there, Local 6 representative.

21 Q. (By Mr. Plant) He was the Business Agent of Local 6 of
22 the ILWU; is that correct?

23 A. That is right.

24 Q. Well, now, you said that the Millwrights' rates were entirely
25 too high. Did you explain why that was?

1 A. Yes. The Millwrights' rates by contract with the ILWU
2 was tied into the same rate of pay that the machinists would
3 have.

4 So on August 1, or whatever the anniversary date of the
5 machinists' contract would be, that would be the same date
6 that the adjustment would be made for the Millwrights in the
7 felt mill.

8 Q. Did you take any position with Mr. Burke as to why the
9 Millwrights' rates were too high?

10 A. Yes, in the latter part of '61 when we discussed this, I
11 recall pointing out to Mr. Burke that those rates were entirely
12 too high and that we should, perhaps, give some thought as to
13 what rates of pay were being paid in the area as far as
14 machinists were concerned.

15 Q. Was there any discussion of the machinists' rates in
16 connection with the Millwrights' rates?

17 A. You mean machinists 1304?

18 Q. Yes.

19 A. Yes, there was.

20 Q. And what was that discussion?

21 A. That the machinists' rates had reached such a point and
22 they were so extremely high that we had to take the action
23 that we did take and that was to terminate the employees and
24 bring in a contractor.

25 Q. And that the Millwrights' rates likewise had gotten too

1 high, is that it?

2 A. Yes, that is right.

3 Q. And you held that position for two years?

4 A. That is right.

5 Q. Now, turning to your 1965 negotiations with 1304, did you
6 have some discussions with him early in the year relative to
7 what man would be entitled to reinstatement?

8 A. Yes, that is right.

9 Q. Are you familiar with -- well, let me familiarize you with
10 it -- Union's Exhibit 16. You have seen that?

11 A. Yes, I saw it.

12 Q. Did you give a copy this to Local 1304 people during the
13 course of your discussions of who would be entitled to re-
14 instatement?

15 A. Not to my recollection, no.

16 Q. Now, later in the year did you engage in some contract
17 negotiations with 1304?

18 A. Yes.

19 Q. Did you give that to them in connection with those
20 contract negotiations?

21 A. Not to my recollection.

22 Q. Do you have any recollection of having given it to them at
23 any time?

24 A. No, none at all.

25 Q. Now, in mid-year you succeeded in executing a contract with

1 1304 relative to Emeryville and another relative to Martinez?

2 A. That is right.

3 Q. And this called for a \$4 an hour wage rate?

4 A. That is right.

5 Q. Can you tell me how that \$4 an hour was arrived at?

6 A. Yes, I knew what the contract was paying to the machinists
7 and maintenance men at the Emeryville plant and as I proceeded
8 in the negotiations with 1304 I would place a price upon each
9 one of the fringe items that they would ask for.

10 For instance, if it is over-time the contractor's machinists
11 were receiving time and a half. 1304 felt that they should
12 have double time because that was something that was very
13 important to their union, so I placed a price on that half time
14 that was in addition to what the contractor was paying and
15 when I went all through that thing and found out definitely
16 what they needed, I then subtracted the sum of what all these
17 items represented, took it away from the rate of pay being
18 paid to the contractor's people and came out to \$4 an hour and
19 I said that would be it.

20 Q. In other words, that was the result of your computation as
21 to what the wage rate should be to equalize wage costs with
22 those of the contractor's?

23 A. Correct, you are.

24 TRIAL EXAMINER: Was that purely on the basis of your
25 calculations or during the course of those discussions which I

1 understood took place, if I recall correctly, from March
2 until July 19th, was it, somewhere around there?

3 THE WITNESS: Yes.

4 TRIAL EXAMINER: Was there any other rates brought into
5 consideration in arriving at the \$4, not necessarily in
6 arriving at the \$4, but which were considered, perhaps dis-
7 carded but nevertheless proposed by you or by the union?

8 THE WITNESS: Well, at the very beginning of our negotiations
9 we naturally talked about the rates that were being paid for
10 a similar type of work and particularly the rates that the
11 1304 contracts had in them.

12 We talked considerable about those and then gradually as
13 we moved along in the negotiations we began moving along this
14 formula that I just described to you in arriving at those
15 costs that I subtracted to come out to the \$4 rate; the
16 union participated with me on those things.

17 They would question my reasoning for it and how I arrived
18 at it and so forth.

19 TRIAL EXAMINER: Now, did the union have any members who
20 were working at other plants in the Bay Area doing work the
21 same, similar or comparable to your unit employees?

22 THE WITNESS: Did they have any?

23 TRIAL EXAMINER: Yes.

24 THE WITNESS: Yes, they did.

25 TRIAL EXAMINER: And do you recall how their wage compared

1 with the \$4 figure?

2 THE WITNESS: They were less.

3 TRIAL EXAMINER: They were less?

4 THE WITNESS: They were less.

5 Q. (By Mr. Plant) They were less.

6 Q. (By Mr. Plant) Mr. Thumann, did the union make any final
7 efforts to obtain more than \$4?

8 A. Yes, they did.

9 Q. What position did you take with them?

10 A. I said that that was all there was, no more than \$4.

11 Q. Did you make any reference in that connection to the cost
12 of contracting?

13 A. Could you rephrase that question again? I don't understand
14 it.

15 Q. Well, in refusing to go higher than \$4, did you make any
16 reference to the \$4 cost as compared with the cost of having
17 a contractor do the work?

18 A. Yes, I pointed out to go over \$4 would then raise the cost
19 above what we were paying to the contractor.

20 TRIAL EXAMINER: Who was your contractor's employees, what
21 union were they members of?

22 THE WITNESS: The ones who were doing the machinist work
23 were Millwrights associated with the Carpenter's union.

24 MR. LEFF: Are you finished?

25 MR. PLANT: Yes.

CROSS-EXAMINATION

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Q. (By Mr. Leff) Mr. Thumann, when did you start negotiating the 1934 contract?

A. When did we?

Q. When did you personally start?

A. In 1948.

Q. Was that when the Pabco wage formula was introduced?

A. I believe it was introduced the following year, '50 or it might have been '51, but I am rather certain it was not introduced in '59.

Q. Well, whenever it was introduced who first proposed it?

A. I did.

Q. And did the union consider it?

A. Yes, they did.

Q. And I take it in due course they agreed and then it went into the contract?

A. That is right.

Q. And it continued in every contract from whenever it went in to 1959?

A. That is right, each year that we had negotiated, we would negotiate for a certain period of time and each that that period of time was over we negotiated again and then continued.

Q. And in all those contracts the Pabco wage formula simply continued from contract to contract?

A. That is right.

1 Q. Did you ever propose any changes in that contract?

2 A. Only in the sense of pointing out that the entire cost
3 consisting in that formula and everything else was entirely
4 too high and that we had to get our cost down.

5 Q. Now, Mr. Thumann, in your discussion with Mr. Burke about
6 the Warehousemen's Millwrights rates did you state to him in
7 referring to the 1304 machinists that their rates were so
8 high that you had to take the action that you did?

9 A. That is right.

10 Q. And you indicated to him that the ILWU rates were too
11 high too?

12 A. That is right.

13 Q. And I take it you meant by that unless the Warehousemen's
14 Millwrights rates went down they too would face the possibility
15 of loss of job?

16 A. No, I didn't. I pointed out to him that the rates were
17 entirely too high but I made no threats at all. ||

18 Q. I take it you also didn't make any threats to Local 1304
19 in the 1965 negotiation that if they didn't agree to a wage
20 cost equal to the contract there would be no contract?

21 MR. PLANT: Objected to as immaterial.

22 TRIAL EXAMINER: You may answer.

23 THE WITNESS: Oh, I can?

24 The very first meeting that I held with 1304 I reviewed
25 with them where we were and that if we had only known back

1 in '59 that we were supposed to do some talking about these
2 things before our minds were made up, why we would have gone
3 through that motion and I said now we are going through that
4 motion now and as you understand fully that we are only
5 obliged to discuss this matter with you and then if we find
6 that we cannot work it out to our satisfaction, we are then at
7 liberty to continue on with our contracting.

8 So therefore, we had better adjust our sights in light of
9 that, in working out the contract.

10 MR. ROCHE: Thank you.

11 MR. LEFF: Thank you very much.

12 MR. ROCHE: No questions.

13 TRIAL EXAMINER: You are excused, thank you.

14 (Witness excused.)

15 MR. PLANT: Respondents rest, your Honor.

16 MR. LEFF: Your Honor, we have one witness and this is the
17 witness that testified to the information you requested about
18 the negotiation of the Warehousemen's Millwrights rates and
19 we ask your Honor for about five minutes so that we might speak
20 to Mr. Burke and then we will be ready for his testimony.

21 MR. PLANT: Mr. Thumann has just testified to it.

22 MR. LEFF: It is a very short witness, your Honor.

23 TRIAL EXAMINER: Very well.

24 Off the record.

25 (Discussion off the record.)

1 TRIAL EXAMINER: On the record.

2 MR. LEFF: Your Honor, I call Mr. William Burke.

3 Whereupon,

4 WILLIAM BURKE

5 was called as a witness by and on behalf of the Charging Party
6 and, having been first duly sworn, was examined and testified
7 as follows:

8 DIRECT EXAMINATION

9 Q. (By Mr. Leff) Mr. Burke, would you state your full name,
10 please.

11 A. William Burke, B-u-r-k-e.

12 Q. Your address?

13 A. I am Business Agent for Warehouse Union Local 6 of the
14 International Longshoremen and Warehousemen's Union.

15 My business address is 99 Hagenberger Road, Oakland.

16 Q. Thank you, sir.

17 Referring to the period prior to July 31, 1959, did Local
18 6 have a contract with Fibreboard?

19 A. Yes, we did.

20 Q. And was one of the classifications in that contract
21 Millwrights?

22 A. Yes.

23 Q. And --

24 A. A grouping called the Millwright group.

25 Q. And this included a number of classifications, Millwrights

1 felt man, oiler, helper, things of that sort?

2 A. That is right.

3 Q. And the rate for that Millwrights group were related to
4 the rates in the 1304 machinists contract, is that correct?

5 A. That is right.

6 Q. Now, I wonder if you could simply state in your own words
7 what happened after July 31, 1959 relating to the rates of
8 your Millwrights?

9 A. We historically waited until 1304 of the machinists
10 settled their negotiations and then the adjustments were
11 automatically passed on to our group under our contract on a
12 tandem basis and as set forth in the contract historically.

13 At some times there were inquiries made after 1304 settled
14 as to what the increase was and then they would get it, that
15 is from the men to me and who approached management and it was
16 just a matter of processing through payrolls; it was automatic.

17 We didn't negotiate that rate.

18 In July I was advised that there was possible strike
19 pending at Fibreboard between 1304 and the company over the
20 question of cost items and so we were waiting until the dispute
21 would be resolved.

22 It developed into a strike. We shut down the whole plant
23 and after the strike there was quite a bit of confusion and
24 some controversy on the job between ourselves and our members
25 and the contracting outfit that took over 1304's jurisdiction

1 and the matter of the wage increase was up in the air and we
2 were patiently waiting, at least the men involved -- there were
3 only a couple at that time -- until the matter would be re-
4 solved and through the passage of time, I am very embarrassed
5 to state that I lost sight of the entire problem until the
6 steward in the felt mandepartment asked me the question, "Say,
7 when are the Millwrights in our group going to get a raise?"

8 And then it was like a flash explosion and it dawned on
9 me that these people were getting no wage increase.

10 Q. When did this come to your attention, Mr. Burke?

11 A. Well, it was shortly before we executed a letter between
12 ourselves and the company setting up a method by which the
13 Millwrights would get a wage increase, the latter part of '61
14 or early '62, I forget when.

15 Q. And what happened then?

16 A. I called Mr. Thumann promptly and told him we had better
17 get together because we couldn't allow this kind of a situation
18 to continue.

19 Q. Now, at that time, Mr. Burke, had you negotiated or just
20 completed negotiating a master agreement?

21 A. Yes, in June 1961. It was after that date that this matter
22 was brought to my attention.

23 Q. And that June '61 contract was for how long?

24 A. Three years, to '64.

25 Q. And then late in '61 this problem of the Millwrights came

1 up?

2 A. Yes.

3 Q. And you contacted Mr. Thumann?

4 A. Yes.

5 Q. You met with him?

6 A. Yes.

7 Q. And could you tell us as best you recall what he said and
8 what you said in the meeting?

9 A. Well, generally the discussion was that these people should
10 not go along with our wage increase just because 1304 is no
11 longer there to which their rates had been attached.

12 It was not equitable and Mr. Thumann recited a problem of
13 having 1304 on the rates and I told him there was litigation
14 pending but I told him I wouldn't be primarily interested, you
15 see the unions in our jurisdiction was getting a wage increase
16 to the extent that at least less of the membership got and
17 that from my point of view that they should have their equity
18 restored going backwards to their last wage increase and put
19 it, at least, on the same basis that the warehousemen got in
20 their wage adjustment and Mr. Thumann demurred about going
21 back a couple years or so but he came -- we came to an agree-
22 ment that the next June following they would receive an identical
23 general wage increase that all other members in our union at
24 Pabco or Fibreboard received.

25 So that was agreed to and was made effective and we

1 executed a letter to that extent and they have been getting
2 the same general wage increases as our membership throughout the
3 plant got every since.

4 Q. At that time how many of your members were involved in
5 this special Millwrights group?

6 A. Only a couple.

7 Q. And you had already negotiated your master agreement;
8 is that right?

9 A. Yes, Fibreboard is party to a multiple employers unit
10 agreement, the master contract.

11 Q. Had you considered any economic action related to the
12 rates of these two men?

13 A. Well, we would have had to consider something if something
14 hadn't been worked out. However, in discussing it with the
15 individuals affected and the stewards and the members of the
16 plant committee, it was not deemed advisable to shut down the
17 whole plant over restoring the back wages of which we thought
18 they really should have had and with agreement of the men
19 involved, the individuals involved we proceeded to consent to
20 these couple of people getting the general wage increase all
21 other members received. ✓

22 MR. LEFF: No further questions, your Honor.

23 MR. ROCHE: No questions.

24 CROSS-EXAMINATION

25 Q. (By Mr. Plant) Mr. Burke, you said that Mr. Thumann

1 referred to the trouble he had with 1304 wages.

2 What did he say about that?

3 A. He said they were too damn much.

4 Q. And did he say as a consequence the Millwrights rate
5 which had followed their rates were too damn much?

6 A. Well, I don't know whether he talked about the Millwrights
7 in that respect. He said there were no longer 1304 members
8 working there so there was no tandem relationship so they
9 were attached to nothing.

10 Q. Didn't he point out to you that the 1304 rates of
11 Fibreboard had been far higher than the rates at other plants
12 where 1304 was representing the maintenance people?

13 A. I am quite sure he must have said something like that
14 but as you might say it was irrelevant at that point, as far as
15 I was concerned.

16 That matter was in litigation and we did respect the
17 picket line of 1304 but it was up to 1304 to resolve that type
18 of an issue.

19 Q. By the way, you referred to a strike. You mean by that
20 picketing occurred which occurred after Fibreboard left the
21 work to the contractor, do you not?

22 A. Well, I am not speaking from a technical point of view
23 whether it was a lockout or a strike. Let me put it any kind
24 of picket line that we observed is a picket line and we don't
25 cross picket lines. We generally call it -- whether there was

1 a beef or what have you, whether it was a lockout or a strike,
2 I am in no position to say and all I know is there was a
3 picket line.

4 We respected it and we did not go back to work until 1304
5 removed the picket line and gave us clearance to go back to
6 work.

7 That is the usual trade union procedure.

8 MR. PLANT: I have no further questions.

9 MR. ROCHE: No questions.

10 TRIAL EXAMINER: I want you to explain to me after you
11 didn't have 1304 as a guideline to follow, that is after the
12 time that the independent contractor came in with his men and
13 supplanted them, what again was the formula that you used in
14 arriving at the wage scale during that period of time; that is
15 up until 1965 when the new contract was executed with 1304,
16 that intervening period of time; what formula did you use in
17 arriving at the wage scale of your Millwrights?

18 THE WITNESS: We didn't negotiate for them as a separate
19 classification. We negotiated general wage increases for all
20 of our members working at the various establishments under the
21 master contract.

22 TRIAL EXAMINER: In other words, --

23 THE WITNESS: And that same general wage increase was
24 applied uniformly to all classifications up and down the scale.

25 Q. (By Trial Examiner) Do you recall the figures, the wage

1 rate that your men at the Fibreboard plant received after
2 1304 went out of the picture?

3 MR. PLANT: You are talking about the maintenance or the
4 Millwrights or --

5 TRIAL EXAMINER: His ILWU Millwrights.

6 THE WITNESS: I will refer to my file here.

7 3.61 and a half an hour.

8 Q. (By Trial Examiner) 3.61 and a half an hour, that was
9 during that intervening period?

10 A. That was as of 1959.

11 Q. As of 1959. Then what was the next wage rate?

12 A. Then there was a hiatus because as I explained we lost
13 sight of the situation for the two men and they didn't bring
14 it forward.

15 There was no wage increase until June 1, 1962. They
16 remained stationary.

17 Q. What did they receive June 1st, 1962?

18 A. They received a general wage increase in effect for all
19 other classifications which was eight cents an hour.

20 Q. It brought them up to 3.69?

21 A. 3.69 and a half.

22 Q. And how long did that continue in effect?

23 A. One year.

24 Q. That took them to what; then what was the next wage rate
25 that these two were getting?

1 A. In June 1, 1963 they got an additional 10 cents.

2 Q. That is 3.79, approximately?

3 A. 3.79 and a half.

4 Q. Yes.

5 A. June 1, '64 they got an additional 10 cents.

6 Q. That would be --

7 A. 3.79 and a half.

8 Q. 3.79 and a half.

9 A. June 1, '65 they got nine cents.

10 Q. That was what?

11 A. 3.88 and a half.

12 Q. Now, we get up to the point where 1304 is back in the
13 picture; is that correct?

14 MR. LEFF: Your Honor, may I correct this June 1st, '64?

15 It should have been 3.89 and a half because June 1st,
16 '63 was 3.79 and a half; June 1st, '65 brought it up to 3.98
17 and a half.

18 TRIAL EXAMINER: June 1st, what?

19 THE WITNESS: June 1, '63 is 3.79 and a half. June 1,
20 '64 is 3.89 and a half.

21 MR. LEFF: June 1st, '65 would be 3.98 and a half.

22 TRIAL EXAMINER: As of June 1st, '65, and the current
23 contract with 1304 was executed July 1965?

24 MR. LEFF: Right.

25 TRIAL EXAMINER: And that provides for \$4.

1 MR. DEFF: Right.

2 TRIAL EXAMINER: So they are practically the same.

3 All right, that is all I wanted to know.

4 Q. (Sy Mr. Plant) Mr. Burke, I think that one of your
5 answers may have been mistaken.

6 Did I understand you to say that the Millwrights wage
7 rates over there in July of 1959 was what?

8 A. 3.61 and a half.

9 Q. Wasn't that the wage rate that resulted from the June 1st,
10 '61 increase?

11 A. No, that was the increase in effect prior to the
12 Millwrights strike.

13 Q. Now, wage, the Millwrights strike --

14 A. I mean Local 1304 strike.

15 Q. If I were to tell you that the Local 1304 rate which was
16 in effect in July 1959 immediately prior to the time that work
17 was let out was 3.52.5, 3.52 and a half, would that change
18 your testimony?

19 A. Yes. Then it meant that I got it a little earlier than
20 this letter of understanding because the first paragraph of my
21 letter confirms the understanding reached but I have ^a covering
22 note to our chief steward that I couldn't find the understanding
23 in our files and I was sending a letter to Mr. Thumann for
24 confirmation so maybe the Millwrights instead from our point
25 of reference being gyped out of 28 only got gyped out of 29

1 cents an hour, so you may be right in the sequence there but
2 let me state this specifically that as of April 18th, 1962 which
3 is the date of the letter conforming our understanding with
4 the company through Mr. Thumann, the rates on that date for
5 Millwrights in our bargaining unit was 3.61 and a half per hour.

6 MR. PLANT: Right.

7 THE WITNESS: And then the other rates going forward here
8 will have to be adjusted upwards -- no they won't. They will
9 be correct.

10 Q. (By Mr. Plant) The June 1st, '61 rate, the one that went
11 in effect June 1st, '61 was 3.61.5.

12 June 1st, '62 it went up to 3.62.5.

13 June 1st, '63 it went up to 3.79.5.

14 Does that sound right?

15 A. That is right.

16 That is why I say you have to add nine cents to what I
17 have just --

18 TRIAL EXAMINER: We have a stipulation on that, don't we?

19 MR. PLANT: Sure we do.

20 TRIAL EXAMINER: Let me ask you this --

21 THE WITNESS: They are currently getting that 4.36 and a
22 half or as of June 1 of this year.

23 MR. PLANT: Well, that I just don't know about.

24 TRIAL EXAMINER: Now, about the period when 1304 was out
25 of the picture, did you have any other Millwrights in any other

1 plant doing the same work as your two men in Fibreboard that
2 were covered by a contract under that multi-employer group
3 contract that you spoke about?

4 THE WITNESS: We had a category of maintenance mechanic,
5 A, and maintenance mechanic B, and our people at Fibreboard
6 were traditionally over that rate in the master contract.

7 TRIAL EXAMINER: Do you have any others of your members
8 working at other plants under this multi-employer group
9 contract that did work similar to those at Fibreboard, the
10 two men at Fibreboard?

11 THE WITNESS: Yes.

12 TRIAL EXAMINER: Now, did that enter into the arrange-
13 ments with respect to the increases you spoke about during the
14 period I am speaking about, the period when 1304 is out of the
15 picture?

16 Did that enter into the wage rate arrived at for the
17 Fibreboard two men, that is the rates that were negotiated
18 under that multi-employer bargaining contract? ✓

19 THE WITNESS: No.

20 TRIAL EXAMINER: It has no relationship?

21 THE WITNESS: No.

22 TRIAL EXAMINER: Well, then, explain to me again how you
23 arrived at these increases that I went over with you during that
24 period when 1304 was out of the picture.

25 MR. PLANT: Your Honor, perhaps I can straighten that out

1 with you with some questions.

2 TRIAL EXAMINER: Well, let me hear the witness.

3 THE WITNESS: It was just a matter of relating it to what
4 the other members of Fibreboard were receiving then and in the
5 future in the way of a general wage increase over and above their
6 present rate of pay.

7 TRIAL EXAMINER: You mean the members who were other than
8 Millwrights?

9 THE WITNESS: Yes.

10 TRIAL EXAMINER: In other words, if you worked out for
11 them a 10 per cent increase, that is for the others other than
12 the Millwrights then the two Millwrights got 10 per cent.

13 THE WITNESS: Yes.

14 TRIAL EXAMINER: And that was the basis without dotting
15 the "I's" and crossing the "T's".

16 Well, I understand now.

17 Is there anything further?

18 MR. PLANT: Yes. I just wanted to ask a further question.

19 Q. (By Mr. Plant) It is true, is it not, Mr. Burke, that
20 your union represented the bulk of the production employees in
21 the Fibreboard plant?

22 A. That is true.

23 Q. And these wage increases that the Millwrights got starting
24 in '61, June of '61, were the same wage increases that the
25 other production employees in the plant got?

1 A. That is true.

2 MR. PLANT: Does that clear it up, your Honor?

3 TRIAL EXAMINER: Yes, and that was the same percentage
4 increase that the two Millwrights got.

5 REDIRECT EXAMINATION

6 Q. (By Mr. Leff) Mr. Burke, you mentioned, I think, in
7 response to one question that your members lost something
8 because they got no increase in '59 and '60.

9 Could you explain what you mean by that?

10 A. Well, it was looked upon as a loss that they neither got
11 an increase by virtue of having been attached to the Millwrights
12 rate under 1304 nor did they get an increase by virtue of our
13 general area negotiations which all members of the union got
14 on each June 1 of a contract.

15 Q. How much was this loss that your other members in the plant
16 got in '59 and '60?

17 MR. PLANT: Well, your Honor, I will object to that as
18 calling for a conclusion of the witness.

19 It has been gone into and into. The figures are all before
20 us.

21 TRIAL EXAMINER: It has all been stipulated, hasn't it?

22 MR. LEFF: No, this figure is not in, your Honor.

23 MR. PLANT: Well, it is too.

24 TRIAL EXAMINER: Out of a super abundance of caution we
25 will take it.

P R O C E E D I N G S

1 TRIAL EXAMINER SAHM: On the record.

2
3 Gentlemen, before I go into what I indicated to you in an
4 off-the-record colloquy with respect to certain matters, that
5 since the conclusion of the last session of our hearing, in
6 studying this record certain questions have arisen in my mind,
7 mostly having to do with clarification for my own benefit.

8 So, is there anything you care to state before we go into
9 those questions that I have?

10 MR. ROCHE: General Counsel has nothing to state at this
11 time, Your Honor.

12 MR. PLANT: I have nothing, Your Honor.

13 MR. LEFF: Your Honor, Union counsel has nothing to add.

14 TRIAL EXAMINER: First of all, what were the independent
15 contractor's employees paid during the back-pay period?

16 I address myself to all of counsel.

17 MR. LEFF: You mean exact amounts, Your Honor?

18 MR. PLANT: The hourly wage rates?

19 MR. LEFF: They were paid building trades' rates for
20 millwright.

21 TRIAL EXAMINER: Now, the building trades' rate, is that
22 the building trades' rate that is in the contract, the last con-
23 tract between the Respondent and the Union, that one that ex-
24 pired on August 1, '59?

25 MR. LEFF: No. That rate was 12-1/2 cents less than the

1 building trades' rate. The millwrights, it is my understand-
2 ing, were paid the rate established by the Building Trades
3 Union and the AGC, the area contract.

4 TRIAL EXAMINER: Is there anything in the record where
5 those rates are set out?

6 MR. LEFF: I believe they are, Your Honor.

7 MR. ROCHE: The specification, Your Honor.

8 MR. LEFF: There is a specification and I believe there
9 is a stipulation that covered this period that is not within
10 the back-pay period as to what the rates were.

11 TRIAL EXAMINER: There is nothing during the back-pay
12 period?

13 MR. LEFF: The back-pay period was specifically covered
14 in the specification in the pleadings. I believe that there
15 was a stipulation that covered the building trades millwrights'
16 rates other than the back-pay period, that is the period from
17 '59 to '62.

18 TRIAL EXAMINER: You don't have anything that you can
19 refer to?

20 MR. FLANT: Bear with me just a moment, Your Honor.

21 MR. ROCHE: I would call the attention of Your Honor to
22 Paragraph 6 of the specifications which lists the building
23 trades millwrights' rates for the period from June 16, 1952,
24 through the present date. This Paragraph 6 of the specifica-
25 tion does not, however, cover the so-called "dead" period or

1 hiatus period between 1959 and 1962.

2 TRIAL EXAMINER: Well, by the "back-pay period", when I
3 speak of back-pay period, I mean September 14, 1962 to
4 January 18, 1965. So, unless I indicate otherwise, disregard
5 the so-called dead or hiatus period.

6 Can I see what you are referring to there?

7 MR. PLANT: On page 136 of the transcript there is a
8 stipulation.

9 TRIAL EXAMINER: Covering that back-pay period?

10 MR. PLANT: Yes, the rates paid the ILWU millwrights
11 during the back-pay period were as set forth in -- pardon me;
12 that is the ILWU millwrights.

13 TRIAL EXAMINER: Now, the General Counsel points out
14 Paragraph 6 are the rates that the independent contractors'
15 employees were paid during the period in question. But that
16 means the beginning of the back-pay period that the indepen-
17 dent contractors' employees were paid \$4.40 and that doesn't
18 seem right to me. Now, that is just my surmise there; it just
19 doesn't seem right. That seems high to me.

20 MR. PLANT: Well, you must remember, Your Honor, that
21 when you get into this matter of what the independent contrac-
22 tor paid his employees, you have not merely a question of
23 hourly rates, but many other things that enter the picture,
24 what sort of overtime, what sort of fringe benefits, and if
25 you were to go into the entire picture, why, you would find

1 that his costs weren't as high as those hourly rates would
2 indicate.

3 TRIAL EXAMINER: Well, it seems to me that the company
4 had to show during the course of the bargaining, or rather,
5 with respect to the termination of the contract and the hiring
6 of the independent contractor that it was done on the assump-
7 tion -- and I think that is patent throughout this record --
8 on the assumption that what the independent contractor was
9 receiving was much less, or less than what the terminated
10 employees were receiving.

11 MR. PLANT: That is right.

12 TRIAL EXAMINER: Now, I don't know, but as I analyze
13 this case, I have got to look for guidelines. Any finding I
14 make, I have got to put upon some reasonable basis.

15 Now, I don't say that the reasonable basis is necessarily
16 what they were receiving, but I think it does shed some light
17 on a basis, or it may be tangentially or directly, for de-
18 ciding what the wage rate should be during the back-pay period.

19 I don't want to be placed in the position -- and I think
20 you will agree with me, too, that I would like to have those
21 figures in here if it is possible, purely from the basis of
22 a complete record, and that, again, is why I conducted this
23 hearing as I did. I not only had in mind understanding the
24 record, but seeing that we had a complete record.

25 I would dislike seeing -- and I don't know whether this

1 MR. LEFF: Your Honor, may I propose a stipulation which
2 may clarify this, that the employees of the independent con-
3 tractor for the period from 1959 to 1965 that were doing mill-
4 wrights' work were paid the rates of millwrights under the
5 contract between the building trades and the associated
6 general contractor in the Bay Area.

7 TRIAL EXAMINER: That was the formula that was in the
8 expired contract?

9 MR. LEFF: No. The expired contract was 12-1/2 cents
10 under that. But the contractor paid the rate for millwrights
11 under the AGC contract, and I propose that stipulation.

12 MR. PLANT: Well, now, my recollection is a little vague
13 on this, but I think that this is correct, that the millwrights,
14 that is, the contractor's employees who were classified as
15 millwrights, were paid the wage rates alleged in Paragraph --
16 I forget the paragraph --

17 TRIAL EXAMINER: 6.

18 MR. PLANT: -- 6 of the specification.

19 MR. ROCHE: I will stipulate to that.

20 MR. LEFF: Your Honor, I would propose the addition that
21 in the period from 1959 to 1962, which I suggest may be rele-
22 vant for the union's position, the rate that they were paid
23 was that one contained in the building trades AGC contract,
24 and I so propose.

25 MR. PLANT: Well, are those rates -- where do they appear?

1 Those contracts aren't in evidence, are they?

2 MR. ROCHE: Well, will you stipulate to the fact that
3 the contracts can be added into the record?

4 MR. PLANT: I just don't know what the facts are.

5 TRIAL EXAMINER: Well, the first part we can stipulate
6 to, is that correct?

7 MR. PLANT: Yes.

8 MR. ROCHE: So stipulated.

9 MR. LEFF: So stipulated.

10 TRIAL EXAMINER: All right, that is noted and approved.

11 And the second part, evidently we can reach no agreement
12 on that.

13 MR. LEFF: Well, I will obtain, Your Honor, during the
14 recess, the rates for the mill trades, the building trades
15 millwrights, during that period, and I will ask Mr. Plant to
16 check the fact that the independent contractor's millwrights
17 were paid the AGC rates.

18 TRIAL EXAMINER: Now, as far as the ILWU millwrights'
19 wage rates during the back-pay period, as I recall, that is in
20 the record.

21 MR. PLANT: Yes.

22 TRIAL EXAMINER: Which union represented the Foremost
23 employees? ✓

24 MR. PLANT: Local 1304. ✓

25 MR. LEFF: Now, may I add, Your Honor, to that, they

1 TRIAL EXAMINER: Yes, I have read at page 437 and page
2 438 Mr. Plant had Mr. Maffee on direct examination. I didn't
3 understand his testimony particularly with respect to --

4 MR. LEFF: You did a skillful job there, Marion, clearing
5 up some confusion in the testimony.

6 TRIAL EXAMINER: That answer, "Oh, six to nine on the
7 side I was involved with." I didn't understand what he was
8 referring to.

9 MR. PLANT: That referred to exclusive of insulation.
10 I think he explained that later.

11 Reisenberg sort of ran insulations. Maffee sent him help
12 from the machine shop when it was required, and when he said,
13 the side he was involved with, he meant the plant exclusive of
14 insulation.

15 MR. LEFF: Your Honor, although on page 438, lines 14 to
16 18, he seems to be saying that the six to nine includes in-
17 sulation, this was later clarified under questioning by Mr.
18 Plant on the following page, page 439, lines 5 to 9. There he
19 indicates that the 6 to 9 was in addition to the insulation.

20 MR. PLANT: The testimony was confusing and it was clari-
21 fied.

22 TRIAL EXAMINER: By "my side", you mean a side other than
23 insulations?

24 MR. PLANT: Yes.

25 TRIAL EXAMINER: Now, what plants are they talking about

1 there, Emeryville or Martinez?

2 MR. PLANT: Emeryville.

3 TRIAL EXAMINER: Has any comparison or study been made
4 by counsel as to what the ILWU millwrights' wage rate was
5 during the back-pay period, as compared to Foremost rates?

6 MR. PLANT: Yes. There is an exhibit in the record on it.
7 It was higher than the Foremost rates. The exhibit number is
8 Exhibit 9.

9 TRIAL EXAMINER: Now, there are differences between the
10 union and the company with respect to the machinists who were
11 on the seniority roster as of the beginning of the back pay.

12 MR. PLANT: I don't think there is any difference -- on
13 the seniority?

14 TRIAL EXAMINER: You remember that footnote of yours in
15 your Schedule 2 of Appendix to the Answer?

16 MR. PLANT: You mean the men who were on the seniority
17 roster as of July 31, 1959?

18 TRIAL EXAMINER: Yes, that is right.

19 MR. PLANT: I don't think there is any difference between
20 the parties as to the men who were on the seniority roster, but
21 I think that there is a difference between us as to the work
22 force actively employed. Some of these men on the seniority
23 roster were off on leave for one reason or other. Some of them
24 because they were sick; Arca, because he was on union business.

25 Now, the testimony of Maffee on that was that, as I recall

1 it, there were actually 35 men working. Yes, there were
2 actually 35 men working, and his testimony was that was all
3 that was needed.

4 TRIAL EXAMINER: Well, Maffee testified that there were
5 39 machinists on the seniority roster.

6 MR. PLANT: Right.

7 TRIAL EXAMINER: But your Schedule 2 of the Appendix
8 to the Answer states 43 men. Now, I didn't know whether he
9 was contradicting your footnote there, or whether those figures
10 can be reconciled.

11 MR. PLANT: Our Schedule what?

12 TRIAL EXAMINER: Respondent's Schedule 2 of the Appen-
13 dix to the Answer.

14 MR. PLANT: I am sure that that schedule doesn't refer
15 to both the powerhouse--

16 TRIAL EXAMINER: Page 434 of the transcript, beginning at
17 line 18, you asked him how many machinists were on the seniority
18 roster, and he answered, yes, very well, 39. And then you
19 get down to your footnote on that Schedule 2.

20 MR. PLANT: Let me find that Schedule. Just one second,
21 Your Honor.

22 The footnote referred to force of 43 men on the machinists
23 and helpers seniority roster.

24 TRIAL EXAMINER: And helpers?

25 MR. PLANT: Yes. You see, there were four helpers.

1 TRIAL EXAMINER: I see.

2 MR. PLANT: On the helpers seniority roster, whereas
3 Maffee's testimony here was relating to machinists.

4 TRIAL EXAMINER: Now, how many men, Mr. Leff, did you
5 consider there were on -- that is, machinists and helpers, as
6 of that date?

7 MR. LEFF: 37 machinists and 4 helpers.

8 TRIAL EXAMINER: That is 41.

9 MR. LEFF: Here we are both talking, I think, about
10 number of jobs in contrast to named men.

11 MR. PLANT: No, the question related to the number of men
12 on the seniority roster.

13 MR. LEFF: The number of men on the seniority roster, I
14 believe we both agree, are 43.

15 MR. PLANT: Of the machinists and helpers combined.

16 MR. LEFF: Of the machinists and helpers.

17 TRIAL EXAMINER: But your breakdown --

18 MR. LEFF: When one converts that into jobs, we would say
19 there were 41 jobs. And the Respondent is contending that there
20 were 39 jobs.

21 TRIAL EXAMINER: 41?

22 MR. LEFF: Right.

23 TRIAL EXAMINER: And he is contending 39?

24 MR. LEFF: Right.

25 TRIAL EXAMINER: There is a difference of 2.

1 MR. LEFF: Right.

2 TRIAL EXAMINER: Now, where do you part company to account
3 for that difference of 2?

4 MR. LEFF: The difference is the status you attach to
5 Homen, Arca, Vanderbeck, Swisher and Yoch, and this is the
6 significance of the footnote.

7 TRIAL EXAMINER: That is how many names you named there,
8 four?

9 MR. ROCHE: I believe, Your Honor, that the difference of
10 2 is accounted for this way, that the Respondent contends --
11 help me if I am wrong, Mr. Plant -- the Respondent contends
12 that Yoch and Swisher were on temporarily, and they would have
13 been dropped off as soon as Homen and Arca came back to work,
14 or Homen and Jobe came back to work.

15 MR. PLANT: I am not going to talk in terms of their
16 being on temporarily, counsel. I say that they were there and
17 would have been laid off and no longer needed.

18 Now, just when that would have been, I don't know, but
19 the fact is that on July 31, 1959, there were only 35 machinists
20 working. For a while there had been only 33, before they hired
21 Swisher and Yoch, but on that date there were only 35 machinists
22 working, and Maffee testified that that number was adequate to
23 take care of the needs of the plant.

24 TRIAL EXAMINER: Well, then, what it comes down to is
25 Yoch and Swisher you contend that they would have been retained

1 when Homen and who came back?

2 MR. LEFF: Homen and Arca.

3 TRIAL EXAMINER: Homen and Arca came back. And Respon-
4 dent counsel states, no, that they were just there.

5 Now, what finding should I make on the basis of this
6 stipulation? Does it have any relevancy that Yoch and Swisher
7 were not told at the time that they were employed --

8 MR. PLANT: I think it is utterly irrelevant. No man is
9 told at the time that he is employed that this is a purely
10 temporary job. Fibreboard doesn't know. They hire him and
11 if and when the time comes that when they didn't need him,
12 they lay him off. But he may be two weeks and he may be there
13 two years or ten.

14 TRIAL EXAMINER: Don't you think, as a matter of personnel
15 policy, from the standpoint of humanitarian aspects, that
16 a large company like Fibreboard would say to a couple of men
17 like this, "There are two men who are sick and we are hiring
18 you, knowing that," something of that sort? I mean, is that
19 a reasonable inference for me to make?

20 MR. PLANT: It is not a reasonable inference, Your Honor,
21 for this, one, number one, they weren't hired specifically to
22 replace two men who were sick. There were four men who were
23 absent for one reason or another.

24 TRIAL EXAMINER: Arca was returning, wasn't he, in a week
25 or so?

1 MR. LEFF: August 2nd, was his date of return.

2 MR. PLANT: There were four men as I recall it, and one
3 of them was Vanderbeck. He was working over in the powerhouse.
4 No company that I know of, when it hires a man working under
5 a union contract tells him that this is a temporary job or it
6 isn't. They don't know. How do they know? For all Fibre-
7 board would have known, some of those men would have died and
8 never come back.

9 TRIAL EXAMINER: That is right; that is right.

10 MR. PLANT: For all they knew, business would increase
11 and they would need the man. They had no way of telling things
12 like that.

13 Now, the man knows from the fact that he is at the tail
14 end of the seniority list that if work slacks off or men
15 return, he will be the first to leave. He knows that.

16 MR. LEFF: Your Honor, I was responding to the footnote
17 on the bottom of Schedule 2 in which Mr. Plant stated Swisher
18 and Yoch had been hired on July 20th, 1959, as temporary re-
19 placements for Homen and Area. In my pre-trial statement at
20 the bottom of page 2 and top of page 3, I compared my analysis
21 and how I arrived at the 37 figure that compares with the 35
22 that Mr. Plant arrived at.

23 MR. PLANT: Well, I was careless in making that statement,
24 but it doesn't matter who they were hired as replacements for.
25 After all, we have no way of knowing whether their jobs were

1 temporary or permanent or what. There is no such thing as a
2 permanent job as a matter of fact.

3 TRIAL EXAMINER: Well, I think we are pretty clear, too,
4 that welding, pipefitting and rigging was not part of the
5 unit employees' duties prior to the termination, but however
6 under the independent contractor it was, and subsequent to
7 reinstatement of the unit employees it has been.

8 MR. PLANT: I don't know as it is bargaining unit work
9 they have been doing, and I don't know how long they will con-
10 tinue to get buy with it without some of the craft unions
11 raising a squawk.

12 TRIAL EXAMINER: Yes.

13 MR. PLANT: It is not a matter which is generally adver-
14 tised. The contractor kept the Pipefitters Union happy by
15 hiring one pipefitter and they closed their eyes to the fact
16 that millwrights were doing the pipefitting work elsewhere in
17 the plant.

18 TRIAL EXAMINER: No, I want to take you down to Union
19 Exhibit 17, and that is also in the offer of proof of the
20 General Counsel and the Union. It has to do with the problem
21 of again what I refer to imprecisely, but I think you know what
22 I have reference to, the parol evidence matter in this case.
23 That Union's Exhibit 17, I believe, which is a letter from
24 Respondent's counsel to Compliance Officer of the 20th Region,
25 with an attached schedule "A", shows the compulsory retirement

1 their minimum earnings are going to be.

2 MR. ROCHE: I say, if possible, because in the event one
3 of them has a regular job that pays a regular salary, a
4 projection would be possible.

5 TRIAL EXAMINER: Won't it be just a question of when re-
6 instatement was offered as to the cutoff date?

7 MR. PLANT: That is right. I don't see that Your Honor
8 in those two instances could do any more than lay down the
9 principles.

10 MR. LEFF: Your Honor, it would seem to me that we have
11 the interim earnings as stipulated to for the three men, I
12 believe, up to the second quarter of '67. It may be that there
13 could be an award referring to that period and then continuing
14 thereafter following general principles.

15 MR. ROCHE: I agree.

16 TRIAL EXAMINER: Now, Olson was working where, did you
17 say? In the powerhouse?

18 MR. LEFF: Yes.

19 MR. PLANT: Yes.

20 TRIAL EXAMINER: And that was discontinued in '64?

21 MR. LEFF: No, Your Honor, he was a fireman up to 1964
22 and then automatic controls were put on, and later in 1964
23 when Hughes retired, he would have been the most senior man
24 who would have moved up to become an engineer.

25 TRIAL EXAMINER: Now, the entire powerhouse operation was

1 discontinued, am I correct, on October 21, 1967?

2 MR. PLANT: Yes.

3 MR. ROCHE: That is correct.

4 TRIAL EXAMINER: I made reference at one point to uni-
5 formity of terms. Do you recall whether or not the terms
6 "machine shop" and "main shop" are used interchangeably?

7 MR. PLANT: Yes.

8 TRIAL EXAMINER: Off the record.

9 (Discussion off the record.)

10 TRIAL EXAMINER: We will go on the record.

11 MR. LEFF: I propose to stipulate that the rates that
12 were in the Carpenters Associated General Contractors' contract
13 for the dates that I will give were the rates for millwrights,
14 and that these rates were paid by the independent contractors,
15 Fluor and Pierose, to their millwright employees who were
16 working at the Fibreboard plant, and the rates are effective
17 June 16, 1959, \$3.76. Effective June 16, 1960, \$3.94-1/2.
18 Effective June 16, 1961, \$4.18. Effective June 16, 1962,
19 \$4.40. Effective June 16, 1963, \$4.63. Effective June 16,
20 1965, \$4.92-1/2.

21 MR. PLANT: So stipulated.

22 MR. ROCHE: So stipulated.

23 TRIAL EXAMINER: Very well, noted and approved.

24 Is there anything further?

25 MR. ROCHE: Nothing further from General Counsel, Your

1 Honor.

2 TRIAL EXAMINER: I guess the only thing then before me
3 is the question of --

4 MR. ROCHE: Just a moment. Can we also stipulate that
5 the rate that went into effect for the millwrights under the
6 AGC contract on June 16, 1967, was \$5.55-1/2?

7 TRIAL EXAMINER: That is in your Complaint, isn't it?

8 MR. ROCHE: That is in the specification. I don't think
9 it was specifically denied, but to clarify it, I would like
10 a stipulation on the record.

11 MR. PLANT: How does that check out with the --

12 MR. LEFF: That is the rate that is in Paragraph 6 or 7.

13 MR. ROCHE: Paragraph 6.

14 MR. PLANT: We will stipulate to that.

15 MR. LEFF: So stipulated.

16 TRIAL EXAMINER: Noted and approved.

17 MR. PLANT: Your rates in that paragraph check out with
18 what has just been recited?

19 MR. ROCHE: That is correct.

20 MR. PLANT: All right, we will so stipulate.

21 TRIAL EXAMINER: Off the record.

22 (Discussion off the record.)

23 TRIAL EXAMINER: On the record.

24 I am going to grant you 35 days for the filing of briefs
25 and I assume that you know what procedures you must go through

[GENERAL COUNSEL'S EXHIBIT 1(0)]

[Caption Omitted in Printing]

BACKPAY SPECIFICATION AND NOTICE OF HEARING

The National Labor Relations Board, having on March 27, 1961, issued its Decision and Order,^{1/} and having on September 13, 1962, issued its Supplemental Decision and Order^{2/} which latter directed Respondent, Fibreboard Paper Products Corporation, inter alia, to make whole certain employees^{3/} for their losses resulting from Respondent's unfair labor practices in violation of Section 8(a)(5) and (1) of the National Labor Relations Act (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, et seq.); and the United States Court of Appeals for the District of Columbia Circuit having on July 3, 1963, entered its Decree^{4/} enforcing in full the backpay and make-whole provisions of the Board's Supplemental Decision and Order herein; and the United States Supreme Court having on December 14, 1964, affirmed^{5/} the said Decree of the United States Court of Appeals for the District of Columbia Circuit; and controversy having arisen over the amount of backpay due and the application of make-whole provisions under the terms of the Board's Supplemental Decision and Order herein, the Acting Regional Director of the National Labor Relations Board for the Twentieth Region, pursuant to authority duly conferred upon her by the Board, hereby issues this Backpay Specification and Notice of Hearing and alleges that the backpay due and the make-whole provisions under the Board's Supplemental Decision and Order, as enforced by the Court of Appeals for the District of Columbia Circuit and as affirmed by the United States Supreme Court, are as follows:

^{1/} 130 NLRB 1558.

^{2/} 138 NLRB 550.

^{3/} Named in Appendix A attached, and herein referred to as discriminatees.

^{4/} Fibreboard Paper Products Corporation v. N.L.R.B., 332 F. 2d 411 (C.A. D.C. July 3, 1963).

^{5/} Fibreboard Paper Products Corporation v. N.L.R.B., 379 U.S. 203.

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1.

The backpay period for each discriminatee other than David Arca, Lincoln E. Beck, Carl W. Olson and Logan Ross Jobe begins on September 14, 1962, and ends on January 18, 1965.

2.

The backpay period for discriminatees David Arca, Lincoln E. Beck, and Carl W. Olson begins on September 14, 1962. As Respondent has not yet offered reinstatement to these three discriminatees, their backpay continues to accrue until such time as an adequate and proper offer of reinstatement has been made to them. Determination of Respondent's backpay obligation to the said Arca, Beck and Olson, and each of them, for periods subsequent to those covered by Appendices B-2, B-3, and B-38 hereto, is specifically reserved.

3.

Discriminatee Logan Ross Jobe died on November 4, 1959, and therefore no backpay, as such, is claimed on his behalf but determination of the rights of his legal heirs, as to Fibreboard Retirement Plan benefits under the terms of the make-whole order, is specifically reserved.

4.

An appropriate measure of the wages each discriminatee would have earned during his backpay period is based on his average quarterly earnings, including vacation earnings, during the period from August 4, 1958, to July 31, 1959, set forth in Appendix A, as modified by the terms of Respondent's collective bargaining agreement, covering the said discriminatees, in effect at the time of the aforementioned unfair labor practices.

5.

Section I of the said collective bargaining agreement established the wage scale of the discriminatees herein at ". . . \$1.00 per day less than the prevailing Building and Construction Crafts' scale . . ." and further provided

that the said wage scale ". . . shall be applied automatically August 1 of each year." The said agreement also established a work day of eight hours. Accordingly, the \$1.00 per day amounted to a differential of \$.125 per hour.

6.

The Construction Crafts' hourly scale for work of the type performed by the discriminatees herein, as set forth in applicable contracts, during the backpay period herein, was as follows:

June 16, 1962	\$ 4.40
June 16, 1963	4.63
June 16, 1965	4.925
June 16, 1967	5.555

7.

Accordingly, during the backpay period, the basic hourly wage rate of the discriminatees herein would have been, at \$.125 per hour less than the applicable Construction Crafts' scale, as follows:

August 1, 1962	\$ 4.275
August 1, 1963	4.505
August 1, 1965	4.80
August 1, 1967	5.425

8.

The quarterly gross backpay for each discriminatee set forth in Appendix B was determined by multiplying each discriminatee's average quarterly earnings, as set forth in Appendix A, by a factor obtained by dividing the applicable backpay period wage rate, as set forth in paragraph 7 above, by the basic wage rate of \$3.525 of Respondent's collective bargaining agreement in effect at the time of the unfair labor practices. Thus, the factors applicable to various portions of the backpay period, reflecting changes in the wage scale, are as follows:

September 14, 1962, to July 31, 1963	$\frac{4.275}{3.525}$	or 1.2128
August 1, 1963, to July 31, 1965	$\frac{4.505}{3.525}$	or 1.27801
August 1, 1965, to July 31, 1967	$\frac{4.80}{3.525}$	or 1.3617
August 1, 1967, to July 31, 1969	$\frac{5.425}{3.525}$	or 1.5674

9.

The gross backpay for each discriminatee except Jobe, for the fraction of a quarter from September 14 to September 30, 1962, was determined by multiplying 0.19, representing the fraction of the quarter involved, by his average quarterly earnings, as set forth in Appendix A, and then multiplying the product thereof by the appropriate factor for that period, 1.2128.

10.

The gross backpay for each discriminatee, except Arca, Beck, Olson and Jobe, for the fraction of a quarter from January 1 to/18, 1965, was determined by multiplying 0.20, representing the fraction of the quarter involved, by his average quarterly earnings, as set forth in Appendix A, and then multiplying the product thereof by the appropriate factor for that period, 1.27801.

11.

It is admitted that each discriminatee earned the amounts set forth in Appendix B as interim earnings.

12.

The expenses deductible from interim earnings for each discriminatee are those set forth in Appendix B.

13.

Calendar quarter net interim earnings for each discriminatee is the difference between calendar quarter gross interim earnings and calendar quarter deductible expenses as set forth in Appendix B.

14.

Calendar quarter net backpay for each discriminatee is the difference between calendar quarter gross backpay and calendar quarter net interim earnings as set forth in Appendix B.

15.

The total net quarterly backpay due each discriminatee is the sum of the calendar quarters of net backpay due him as set forth in Appendix B.

16.

Medical expenses of each discriminatee during his backpay period are set forth in Appendix B. These expenses include:

- (a) premiums paid for medical insurance coverage, comparable to that which is available under Respondent's group health plan, less the amount the discriminatee would have paid under Respondent's plan; and
- (b) medical and hospital costs incurred by the discriminatee for services which would have been covered under Respondent's group health plan, less the amount the discriminatee would have paid under Respondent's plan.

17.

The total backpay due each discriminatee is the sum of the total net quarterly backpay plus the total reimbursable medical expenses due him, as set forth in Appendix B, with interest at six percent to be computed on the said sum from the date of adjudication thereof.

18.

To effectuate the provisions of the Board's Supplemental Decision and Order herein, the period from July 31, 1959, to September 13, 1962, is to be viewed as one of continuous service for each discriminatee for the purpose of benefits provided by the Fibreboard Retirement Plan. Accordingly, Respondent

is to grant to each discriminatee vested pension rights or retirement income, including retroactive retirement income benefits where appropriate, under the Fibreboard Retirement Plan, based on the service the discriminatee would have accrued during the period from July 31, 1959, to the date of the Board's Supplemental Decision and Order of September 13, 1962, and during his backpay period.

19.


Summarizing the facts and calculations specified above, the obligation of the Respondent to make whole employees under the Board's Supplemental Decision and Order, as enforced and affirmed by the Courts, will be discharged by paying each discriminatee, or his legal heirs, the total amount due him as set forth herein in Appendix C, plus interest accrued to the date of payment, minus the tax withholdings required by Federal and State statutes; by granting each discriminatee or his legal heirs full retirement credit and/or retirement payments under the Fibreboard Retirement Plan, for the period from July 31, 1959, to the end of his backpay period; and by offering to discriminatees David Arca, Lincoln E. Beck and Carl W. Olsen immediate reinstatement to their former or substantially equivalent positions without loss of seniority or other rights and privileges previously enjoyed. Determination of Respondent's backpay obligation with respect to Arca, Beck and Olson for periods subsequent to those covered by Appendices B-2, B-3 and B-38 attached hereto is specifically reserved.

PLEASE TAKE NOTICE that on the 17th day of October, 1967, at ten o'clock in the forenoon, Pacific Daylight Saving Time in the U.S. Tax Court, Room 18201, Federal Building, U. S. Court House, 450 Golden Gate Avenue, San Francisco, California, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the above Backpay Specification, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

YOU ARE FURTHER NOTIFIED THAT, pursuant to Sections 102.54 of the Board's

Rules and Regulations, Series 8, as amended, the Respondent shall file with the undersigned Acting Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an Answer to said Backpay Specification within fifteen (15) days from the service hereof and that to the extent that such Answer fails to deny allegations of the Backpay Specification in the manner required under the Board's Rules and Regulations, and the failure to do so is not adequately explained, such allegations shall be deemed to be admitted to be true and the Respondent shall be precluded from introducing any evidence controverting them.

DATED AT San Francisco, California, this 17th day of August, 1967.


 Natalie P. Allen, Acting Regional Director
 National Labor Relations Board
 Region 20
 450 Golden Gate Avenue, Box 36047
 San Francisco, California 94102

APPENDIX A

DISCRIMINATEES	DEPARTMENT	JOB TITLE	DATE OF HIRE	Average <u>2</u> / Quarterly Earnings 8/4/58 to 7/31/59
1. Aiello, John J. <u>1</u> /	Main Shop	Machinist	5-24-51	2470.00
2. Arca, David <u>1</u> /	Paint	Machinist (Working Foreman)	3-11-43	2045.19
3. Beck, Lincoln E.	Floor Coverings	Machinist	4-27-36	2033.56

1/ Did not work the full base period from August 4, 1958 through July 31, 1959. Accordingly, average quarterly earnings have been computed from earnings for time worked during base period.

2/ Includes vacation earnings.

DISCRIMINATEES	DEPARTMENT	JOB TITLE	DATE OF HIRE	Average ^{3/} Quarterly Earnings 8/4/58 to 7/31/59
4. Bennett, Florin F.	Main Shop	Mechanic	7-25-35	1890.93
5. Bergstrom, Albert	Roofing	Mechanic's Helper	3-26-34	2001.69
6. Bradford, Harry C.	Main Shop	Machinist	11-11-46	2351.25
7. Capps, Dola F.	Truck Shop	Mechanic	12-22-41	1896.60
8. Crispino, Manuel	Main Shop	Mechanic	12-5-21	2055.83
9. Cruze, Joseph S.	Roofing	Mechanic	1-30-28	2205.90
10. Cunningham, Harry L.	Floor Coverings	Mechanic	3-3-47	2288.46
11. Fontes, Clifford L.	Floor Coverings	Machinist	9-26-36	2004.48
12. Fuller Nick C. ^{1/}	Insulation	Machinist	10-21-41	1785.75
13. Fusare, Alex J.	Roofing	Mechanic	2-12-47	1999.32
14. Giffin, John L.	Power House	Engineer (Working Foreman)	11-5-56	2067.33
15. Goranson, George W.	Insulation	Machinist	5-28-37	1978.92
16. Gronberg, D. A.	Roofing	Machinist (Working Foreman)	10-19-39	2039.82
17. Hall, Jr., Harry J. ^{1/}	Roofing	Machinist	9-22-53	1550.25
18. Hamidy, Robert	Floor Coverings	Mechanic	10-1-27	1844.31
19. Haueter, Herbert F.	Power House	Engineer	9-20-33	2373.66
20. Hickethier, E. J.	Truck Shop	Helper	10-7-33	1812.60
21. Hicks, Jr. Richard C. ^{1/}	Main Shop	Machinist	3-19-52	2396.50

^{1/} Did not work the full base period from August 4, 1958 through July 31, 1959. Accordingly, average quarterly earnings have been computed from earnings for time worked during base period.

^{3/} Includes vacation earnings.

22. Holmes, Albert F.	<u>1/</u>	Main Shop	Machinist	8-12-41	2120.50
23. Homen, Joe	<u>1/</u>	Roofing	Mechanic	4-2-36	2627.25
24. Hughes, Robert E.		Power House	Engineer	8-5-37	2359.29
25. Jackson, Warren C.		Floor Coverings	Machinist	6-23-33	2201.91
26. Jensen, Raymond B.		Truck Shop	Mechanic	9-21-40	1953.81
27. Jobe, Logan Ross	<u>2/</u>	Main Shop	Mechanic	10-9-33	0.00
28. Johanson, Elmer T.		Power House	Engineer	12-5-36	2211.27
29. Johnson, Fred C.		Insulation	Mechanic	4-1-37	1829.82
30. Johnson, J. P.		Main Shop	Mechanic	6-22-33	2260.29
31. Lippert, Donald W.		Main Shop	Mechanic	8-10-50	2320.03
32. Longnecker, Joe E.		Floor Coverings	Mechanic	3-25-40	2644.89
33. Lowell, Fredric L.		Power House	Engineer	6-4-34	2347.32
34. Mann, Eugene G.		Power House	Fireman	10-17-39	2279.79
35. Nash, Lloyd J.		Floor Coverings	Machinist (Working Foreman)	10-3-33	1924.83
36. Novacek, George R.		Power House	Engineer	11-30-36	2216.07

1/ Did not work the full base period from August 4, 1958 through July 31, 1959. Accordingly, average quarterly earnings have been computed from earnings for time worked during base period.

2/ Died on November 4, 1959. No backpay, as such, is claimed for Jobe, but determination of Retirement Plan benefits for his legal heirs is specifically reserved.

DISCRIMINATEES	DEPARTMENT	JOB TITLE	DATE OF HIRE	Average 2/ Quarterly Earnings 8/4/58 to 7/31/59
37. O'Leary, Vincent J.	Main Shop	Machinist (Working Foreman)	8-27-47	2386.53
38. Olson, Carl W.	Power House	Fireman	3-1-29	2273.67
39. Oswill, Gurdon W.	Main Shop (Storeroom)	Helper	9-20-33	1692.42
40. Price, Joe	Floor Coverings	Mechanic	2-25-47	2613.15
41. Raineri, Louis C.	Floor Coverings	Mechanic	9-11-33	2466.78
42. Reihl, William W.	Main Shop	Machinist	8-6-47	2320.31
43. Schlatterbeck, Eugene	Main Shop	Machinist (Working Foreman)	6-10-42	2292.90
44. Schoenfeld, Milton H.	Insulation	Mechanic	5-10-40	1875.09
45. Smith, Stanley J. 1/	Floor Coverings	Machinist	1-5-37	2368.25
46. Stewart, Allan 1/	Floor Coverings	Mechanic's Helper	11-29-46	1757.75
47. Swisher, Harold M.	Main Shop	Mechanic	7-13-59	1833.00
48. Vanderbeck, Joseph P.	Main Shop	Machinist (Working Foreman)	9-26-50	2227.62
49. Van Zoen, Jacques J.	Power House	Fireman	4-2-46	2129.22
50. Wall, James R. 1/	Power House	Fireman	8-12-53	2409.25
51. Weismiller, Jr., Gerald	Main Shop	Machinist	5-21-51	2239.41
52. Wittorff, Detlif C.	Floor Coverings	Machinist	2-19-40	2037.21
53. Yoch, August 1/	Main Shop	Mechanic	7-15-59	1833.00

1/ Did not work the full base period from August 4, 1958 through July 31, 1959. Accordingly, average quarterly earnings have been computed from earnings for time worked during base period.

2/ Includes vacation earnings.

APPENDIX B

29. JOHNSON, Fred Clarence

<u>Year & Quarter</u>	<u>Gross Back Pay</u>	<u>Interim Earnings</u>	<u>Deductible Expenses</u>	<u>Net Interim Earnings</u>	<u>Net Back Pay</u>	<u>Medical Expense</u>
1962-3	421.65	0.00	0.00	0.00	421.65	5.07 <u>1/</u> <u>14.00</u> <u>2/</u> 19.07
1962-4	2219.21	0.00	0.00	0.00	2219.21	27.45 <u>1/</u> <u>40.00</u> <u>2/</u> 67.45
1963-1	2219.21	734.75 <u>3/</u>	0.00	734.75	1484.46	27.45 <u>1/</u>
1963-2	2219.21	522.25 <u>4/</u>	0.00	522.25	1696.96	27.45 <u>1/</u>
1963-3	2298.75	10.50 <u>5/</u>	0.00	10.50	2288.25	27.45 <u>1/</u> 11.50 <u>2/</u> <u>18.00</u> <u>2/</u> 56.95
1963-4	2338.53	85.10 <u>5/</u>	0.00	85.10	2253.43	27.45 <u>1/</u> 11.50 <u>2/</u> <u>6.50</u> <u>2/</u> 45.45
1964-1	2338.53	362.00 <u>5/</u>	0.00	362.00	1976.53	27.45 <u>1/</u> 17.00 <u>2/</u> <u>15.50</u> <u>2/</u> 59.95
1964-2	2338.53	280.40 <u>5/</u>	0.00	280.40	2058.13	27.45 <u>1/</u>
1964-3	2338.53	0.00	0.00	0.00	2338.53	27.45 <u>1/</u> 9.00 <u>2/</u> 10.00 <u>2/</u> <u>10.00</u> <u>2/</u> 56.45

- 1/ Medical insurance premiums paid in excess of cost to employees at Fibreboard.
2/ Medical fees employee paid which would have been covered by Fibreboard plan.
3/ Vernon L. Cox Specialty Sales, Tahoe Valley, California . . . 233.00
 Tallac Properties, Daly City, California 501.75
4/ Vernon L. Cox Specialty Sales 241.00
 Tallac Properties 281.25
5/ Tallac Properties 6/ Vernon L. Cox Specialty Sales

APPENDIX B

29. JOHNSON, Fred Clarence

<u>Year & Quarter</u>	<u>Gross Back Pay</u>	<u>Interim Earnings</u>	<u>Deductible Expenses</u>	<u>Net Interim Earnings</u>	<u>Net Back Pay</u>	<u>Medical Expense</u>
1964-4	2338.53	697.50 <u>6/</u>	0.00	697.50	1641.03	27.45 <u>1/</u> 16.00 <u>2/</u> <u>11.50</u> <u>2/</u> 54.95
1965-1	452.62	0.00	0.00	0.00	452.62	5.49 <u>1/</u> <u>15.00</u> <u>2/</u> 20.49
TOTALS	21,523.30	2,692.50	0.00	2,692.50	18,830.80	463.11

Total Net Quarterly Back Pay	\$18,330.80
Medical Expense	463.11
Total Back Pay	<u>\$19,293.91</u>

- 1/ Medical insurance premiums paid in excess of cost to employees at Fibreboard.
 2/ Medical fees employee paid which would have been covered by Fibreboard plan.
 6/ Vernon L. Cox Specialty Sales

[GENERAL COUNSEL'S EXHIBIT 1(n)]

APPENDIX C-1

<u>NAME</u>	<u>BACK PAY FROM APPENDIX B-1 OF SPECIFICATION</u>	<u>PENSION 2/ DEFICIT</u>	<u>TOTAL</u>	<u>DEDUCTIONS</u>	<u>NET BACKPAY</u>
1. AIELLO	5193.36		5193.36	761.20	4432.16
2. ARCA 1/	8154.32		8154.32	1964.43	6189.89
3. BECK 1/	32,505.56		32,505.56	2073.74	30,431.82
4. BENNETT	262.37	1729.56	1991.93	277.72	1714.21
5. BERGSTROM	0.00	1761.46	1761.46		1761.46
6. BRADFORD	8062.19		8062.19	1346.34	6715.85
7. CAPPS	2599.87	1688.96	4288.83	224.02	4064.81
8. CRISPINO	2661.05	4622.64	7283.69	431.06	6852.63
9. CRUZE	10,752.27		10,752.27	676.58	10,075.69
10. CUNNINGHAM	12,093.51		12,093.51	1325.60	10,767.91
11. FONTES	2665.23		2665.23	1097.14	1568.09
12. FULLER	0.00	1037.19	1037.19		1037.19
13. FUSARE	8661.34		8661.34	1155.08	7506.26
14. GRIFFIN	2394.74		2394.74	427.43	1967.31
15. GORANSON	4830.68		4830.68	1133.85	3696.83
16. GRONBERG	2997.23	1777.12	4774.35	307.91	4466.44
17.					
18. HAMIDY	2709.02	2645.96	5354.98	335.55	5019.43
19. HAUETER	11,044.87		11,044.87	1401.03	9643.84
20. HICKETHIER	13,725.12		13,725.12	671.54	13,053.58
21.					

1/ Back pay amounts for Arca, Beck and Olson have been computed only through June 30, 1967. As these three terminated employees have not yet been offered reinstatement, determination of Respondent's back pay obligation to each of them for periods subsequent to June 30, 1967 is specifically reserved.

2/ Pension deficit has been computed through Oct. 31, 1967. Thereafter, Respondent's obligation to each employee on pension will amount to the difference between the amount paid him and the amount he should receive based on continuous service from August 1, 1959 to his compulsory retirement date.

APPENDIX C-1

<u>NAME</u>	<u>BACK PAY FROM APPENDIX B-1 OF SPECIFICATION</u>	<u>PENSION 2/ DEFICIT</u>	<u>TOTAL</u>	<u>DEDUCTIONS</u>	<u>NET BACKPAY</u>
22. HOLMES	3094.32	4662.62	7756.94	368.44	7388.50
23.					
24. HUGHES	20,143.92	3257.85	23,401.77	2061.56	21,340.21
25. JACKSON	8217.48		8217.48	1260.25	6957.23
26. JENSEN	16,792.36		16,792.36	1112.32	15,680.04
27.					
28. JOHNSON, E. T.	20,319.43		20,319.43	2013.71	18,305.72
29. JOHNSON, F. C.	19,293.91		19,293.91	679.06	18,614.85
30. JOHNSON, J. P.	3262.12	2029.42	5291.54	497.30	4794.24
31. LIPPERT	7443.99		7443.99	1311.28	6132.71
32. LONGNECKER	8906.63		8906.63	1581.45	7325.18
33. LOWELL	8408.51		8408.51	2552.48	5856.03
34. MANN	7819.12		7819.12	931.00	6888.12
35. NASH	2775.11	3003.44	5778.55	1502.41	4276.14
36. NOVACEK	7326.95		7326.95	1316.21	6010.74
37. O'LEARY	7225.29		7225.29	1313.41	5911.88
38. OLSON 1/	15,989.78		15,989.78	2037.08	13,952.70
39. OSWILL	6257.49		6257.49	951.13	5306.36
40. PRICE	22,230.80		22,230.80	1526.58	20,704.22
41. RAINERI	21,688.93		21,688.93	968.42	20,720.51
42. REIHL	6671.27		6671.27	1363.40	5307.87

1/ Back pay amounts for Arca, Beck and Olson have been computed only through June 30, 1967. As these three terminated employees have not yet been offered reinstatement, determination of Respondent's back pay obligation to each of them for periods subsequent to June 30, 1967 is specifically reserved.

2/ Pension deficit has been computed through Oct. 31, 1967. Thereafter, Respondent's obligation to each employee on pension will amount to the difference between the amount paid him and the amount he should receive based on continuous service from August 1, 1959 to his compulsory retirement date.

APPENDIX C-1

<u>NAME</u>	<u>BACK PAY FROM APPENDIX B-1 OF SPECIFICATION</u>	<u>PENSION 2/ DEFICIT</u>	<u>TOTAL</u>	<u>DEDUCTIONS</u>	<u>NET BACKPAY</u>
43. SCHLOTTERBECK	9782.66		9782.66	1350.66	8432.00
44. SCHOENFELD	5633.85		5633.85	1065.10	4568.75
45. SMITH	0.00	163.20	163.20		163.20
46.					
47.					
48. VANDERBECK	6370.74		6370.74	1248.19	5122.55
49. VAN ZOEN	3892.18		3892.18	835.65	3056.53
50. WALL	5555.77		5555.77	638.40	4917.37
51. WEISMILLER	7208.28		7208.28	1242.56	5965.72
52. WITTORFF	5529.70	5600.10	11,129.80	504.59	10,625.21
<u>TOTALS</u>	<u>\$389,153.32</u>	<u>\$33,979.52</u>	<u>\$423,132.84</u>	<u>\$47,842.86</u>	<u>\$375,289.98</u>

- 1/ Back pay amounts for Arca, Beck and Olson have been computed only through June 30, 1967. As these three terminated employees have not yet been offered reinstatement, determination of Respondent's back pay obligation to each of them for periods subsequent to June 30, 1967 is specifically reserved.
- 2/ Pension deficit has been computed through Oct. 31, 1967. Thereafter Respondent's obligation to each employee on pension will amount to the difference between the amount paid him and the amount he should receive based on continuous service from August 1, 1959 to his compulsory retirement date.

[GENERAL COUNSEL'S EXHIBIT 1(o)]

APPENDIX C-2PENSION DEFICIT

Pension deficit is the difference between: (a) pension computed on basis of estimated gross earnings for period from August 1, 1959 to Compulsory retirement date and (b) pension as paid, for period from Compulsory retirement date to October 31, 1967.

BERGSTROM	\$1,761.46
BENNETT	1,729.56
CAPPS	1,688.96
CRISPINO	4,622.64
FULLER	1,037.19
CRONBERG	1,777.12
HAMIDY	2,645.96
HOLMES	4,662.62
HUGHES	3,257.85
JOHNSON, J. P.	2,029.42
NASH	3,003.44
SMITH	163.20
WITTORFF	5,600.10
TOTAL	<u>\$33,979.52</u>

[GENERAL COUNSEL'S EXHIBIT 1(p)] APPENDIX C-3DEDUCTIONS

<u>NAME</u>	<u>REFUNDED RETIREMENT PLAN DEPOSITS 1/</u>	<u>EARLY RETIREMENT BENEFITS 2/</u>	<u>PENSION DEPOSITS ON BACK PAY</u>	<u>TOTAL</u>
1. AIELLO	378.10		383.10	761.20
2. ARCA	304.82		1659.61	1964.43
3. BECK	396.89		1676.85	2073.74
4. BENNETT		272.47	5.25	277.72
5.				
6. BRADFORD	431.70		914.64	1346.34
7. CAPPS		172.02	52.00	224.02
8. CRISPINO		378.39	52.67	431.06
9. CRUZE			676.58	676.58
10. CUNNINGHAM	440.20		885.40	1325.60
11. FORTES	399.66		697.48	1097.14
12. FULLER				
13. FUSARE	402.00		753.08	1155.08
14. GIFFIN			427.43	427.43
15. GORANSON	389.68		744.17	1133.85
16. GRONBERG		249.03	58.88	307.91
17.				
18. HAMIDY		282.31	53.24	335.55
19. HAUETER	475.97		925.06	1401.03
20. HICKETHIER			671.54	671.54
21.				
22. HOLMES	306.03		62.41	368.44

1/ If any employee on severing connections with Fibreboard has no vested pension rights, these deposits need not be deducted.

2/ For back pay period only.

APPENDIX C-3

<u>NAME</u>	<u>REFUNDED RETIREMENT PLAN DEPOSITS 1/</u>	<u>DEDUCTIONS EARLY RETIREMENT BENEFITS 2/</u>	<u>PENSION DEPOSITS ON BACK PAY</u>	<u>TOTAL</u>
23.				
24. HUGHES		1275.47	786.09	2061.56
25. JACKSON	415.15		845.10	1260.25
26. JENSEN	379.10		733.22	1122.32
27.				
28. JOHNSON, E.T.		1164.24	849.47	2013.71
29. JOHNSON, F.C.			679.06	679.06
30. JOHNSON, J.P.		426.82	70.48	497.30
31. LIPPERT	460.63		850.65	1311.28
32. LONGNECKER	531.32		1051.13	1582.45
33. LOWELL		1639.68	912.80	2552.48
34. MANN	457.38		473.62	931.00
35. NASH		1092.17	410.24	1502.41
36. NOVACEK	464.51		855.87	1320.38
37. O'LEARY	470.12		843.29	1313.41
38. OLSON	455.93		1581.15	2037.08
39. OSWILL	332.07		619.06	951.13
40. PRICE	490.01		1036.57	1526.58
41. RAINERI			968.42	968.42
42. REIHL	463.17		900.23	1363.40
43. SCHLOTTERBECK	463.19		887.47	1350.66
44. SCHOENFELD	366.27		698.83	1065.10
45.				

1/ If any employee on severing connections with Fibreboard has no vested pension rights, these deposits need not be deducted.

2/ For back pay period only.

46.				
47.				
48. VANDERBECK	439.71		808.48	1248.19
49. VAN ZOEN	401.23		434.42	835.65
50. WALL	131.08		507.32	638.40
51. WEISMILLER	449.27		793.29	1242.56
52. WITTOREFF	396.38		108.21	504.59
53.				
TOTALS	\$11,491.57	\$6,952.60	\$29,403.86	\$47,848.03

[GENERAL COUNSEL'S EXHIBIT 1(r)]

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

FIBREBOARD PAPER PRODUCTS CORPORATION

and

EAST BAY UNION OF MACHINISTS, LOCAL 1304,
UNITED STEELWORKERS OF AMERICA, AFL-CIO;
and UNITED STEELWORKERS OF AMERICA,
AFL-CIO.

Case No. 20-CA-1682

APPENDIX TO AMENDED ANSWER OF
FIBREBOARD CORPORATION TO
BACKPAY SPECIFICATION

MARION B. PLANT,
BROBECK, PELEGER & HARRISON,
111 Sutter Street,
San Francisco, California 94104.

Attorneys for
Fibreboard Corporation.

* * *

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EMPLOYEES TERMINATED JULY 31, 1959Machinists

<u>Name</u>	<u>Seniority Date</u>	<u>Automatic Retirement Date</u>	<u>Average Quarterly Earnings During Base Period</u>
Nash, Lloyd J.	10/3/33	3/1/64	\$1924.83
Jackson, Warren C.	1/1/35		2201.91
Smith, Stanley J.	1/5/37	11/1/59	2363.25
* Beck, Lincoln E.	1/1/38		2038.56
Gronberg, D. A.	10/19/39	1/1/62	2039.82
Wittorff, Detlif C.	2/19/40	4/1/63	2037.21
Holmes, Albert F.	8/21/41	9/1/62	2120.50
Fuller, Nick C.	10/21/41	6/1/61	1785.75
Crispino, Manuel	4/1/42	10/1/62	2056.83
Hamidy, Robert	4/1/42	12/1/62	1844.31
Cruze, Joseph S.	4/1/42		2205.90
Johnson, J. P.	4/1/42	8/1/62	2260.29
** Jobe, Logan Ross	4/1/42		---
Johnson, Fred C.	4/1/42		1829.82
Schlotterbeck, Eugene	6/10/42		2292.90
Bennett, Florin F.	7/17/42	12/1/62	1890.93
Schoenfeld, Milton H.	9/14/42		1875.09
* Arca, David	3/11/43		2045.12 1699.08
Goranson, George W.	3/12/45		1978.92
Jensen, Raymond B.	3/12/45		1953.81
Capps, Dola F.	3/12/46	6/1/62	1896.60
Longnecker, Joe E.	6/10/42		2644.89
Bradford, Harry C.	11/11/46		2351.25
Fusarc, Alex J.	2/12/47		1999.32
Price, Joe	2/25/47		2613.15
Cunningham, Harry L.	3/3/47		2288.46
Raineri, Louis C.	4/17/47		2466.78
Reihl, William W.	8/6/47		2320.31
O'Leary, Vincent J.	8/27/47		2386.53
Fontes, Clifford L.	5/13/49		2004.48
Lippert, Donald W.	8/10/50		2380.08
Vanderbeck, Joseph P.	9/26/50		2227.62
Weismiller, Jr., Gerald	5/21/51		2239.41
Aiello, John J.	5/24/51		2470.00
Hicks, Jr., Richard C.	3/19/52		2396.50
Hall, Jr., Harry J.	9/22/53		1550.25
Homen, Joe	11/9/53		2627.25
Swisher, Harold M.	7/20/59		1833.00
Yoch, August	7/20/59		1833.00

* Disqualified for reinstatement and backpay by picket line violence.

**Died on November 4, 1959.

SCHEDULE 1

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<u>Name</u>	<u>Seniority Date</u>	<u>Automatic Retirement Date</u>	<u>Average Quarterly Earnings During Base Period</u>
<u>Helpers</u>			
Hickethier, E. J.	10/5/42		1812.60
Oswill, Gordon H.	4/11/46		1692.42
Bergstrom, Albert	6/11/46		2001.69
Stewart, Allan	11/29/46		1757.75

<u>Power House Engineers</u>			
Lowell, Fredric L.	3/1/40		2347.32
Hughes, Robert E.	7/1/40	10/1/64	2359.29
Haueter, Herbert F.	4/1/42		2373.66
Johnson, Elmer T.	1/16/43		2211.27
Novacek, George R.	10/1/44	2250.20	2224.24
Giffin, John L.	11/5/56		2067.33

<u>Power House Firemen</u>			
Olson, Carl W.	5/27/46		2273.67
Kann, Eugene G.	1/23/47		2279.79
Van Zoen, Jacques J.	8/15/50		2129.22
Wall, James R.	3/23/59		2409.25

* Disqualified for reinstatement and backpay by picket line violence.

SCHEDULE 1 (Continued)

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CHANGES IN MACHINISTS AND HELPER FORCESEMERYVILLE AND MARTINEZ

<u>Date</u>		<u>Machinists</u>	<u>Helpers</u>	<u>Total Jobs</u>
7/31/59	Normal complement before contracting out	35*	4	39*
8/59	Reorganization of jobs under contractor:			
	Paint Plant working foremen eliminated	-1		
	Felt Mill Working foreman eliminated	-1		
	Storekeeper eliminated		-1	
	Truck Shop helper eliminated		-1	
		33	2	35
10/1/60	Floor Covering and Linoleum Plants			
7/1/61	closed	-11	-1	
		22	1	23
3/1/62	Roofing moved to Martinez	+1	-1	
		23	0	23
3/1/62	Reduction in shop force in conjunction with foregoing changes	-7		
		16	0	16

* Force of 43 men on the machinists' and helpers' seniority rosters as of July 31, 1959, was four in excess of the normal complement. L. R. Jobe had been off sick since February 5, 1959, A. F. Holmes had been off sick since July 2, 1959, Dave Arca had been on leave of absence since July 2, 1959, and J. P. Vanderbeck, while classified as a machinist, was working as a fireman. H. M. Swisher and A. Yoch had been hired on July 20, 1959, as temporary replacements for Holmes and Arca.

SCHEDULE 2

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BOARD EXHIBIT NO. 2PENSION BENEFITS AND BACK PAY ELIGIBILITY

<u>MACHINISTS</u>	<u>PERIOD OF CONTINUOUS SERVICE FOR CREDITING PENSION BENEFITS 1/</u>	<u>PERIOD OF BACK PAY ELIGIBILITY</u>	<u>EXPLANATIONS</u>
NASH	Aug. 1, 1959 - Sept. 12, 1962	Sept. 13, 1962 - March 1, 1964	Compulsory retirement date 3-1-64.
JACKSON	Aug. 1, 1959 - Sept. 12, 1962	Sept. 13, 1962 - Jan. 18, 1963	--
SMITH	Aug. 1, 1959 - Nov. 1, 1959	--	Compulsory retirement date 11-1-59.
BECK	Aug. 1, 1959 - Sept. 12, 1962	Sept. 13, 1962 - Present	Not offered reinstatement yet.
GROSSBERG	Aug. 1, 1959 - Sept. 12, 1962	Sept. 13, 1962 - Jan. 1, 1963	Compulsory retirement date 1-1-63.
WITTORFF	Aug. 1, 1959 - Sept. 12, 1962	Sept. 13, 1962 - April 1, 1963	Compulsory retirement date 4-1-63.
ROLMES	Aug. 1, 1959 - Sept. 12, 1962	Sept. 13, 1962 - Jan. 1, 1963	Compulsory retirement date 1-1-63.
FULLER	Aug. 1, 1959 - June 1, 1961	--	Compulsory retirement date 6-1-61.
CRISPINO	Aug. 1, 1959 - Sept. 12, 1962	Sept. 13, 1962 - Jan. 1, 1963	Compulsory retirement date 1-1-63. Ill 9-15-62 to 1-1-63 on salary plan.
HAHIDY	Aug. 1, 1959 - Sept. 12, 1962	Sept. 13, 1962 - Jan. 1, 1963	Compulsory retirement date 1-1-63.
CRUZE	Aug. 1, 1959 - Sept. 12, 1962	Sept. 13, 1962 - Jan. 18, 1963	Ill from 9-10-62 to 4-15-63 on salary plan.
JOHNSON, J. P.	Aug. 1, 1959 - Sept. 12, 1962	Sept. 13, 1962 - Jan. 1, 1963	Compulsory retirement date 1-1-63.
JOBE	--	--	Ill 11-4-59. No claim made.
JOHNSON, F. G.	Aug. 1, 1959 - Sept. 12, 1962	Sept. 13, 1962 - Jan. 18, 1963	--
SCHLOTTERBECK	Aug. 1, 1959 - Sept. 12, 1962	Sept. 13, 1962 - Jan. 18, 1963	--
BENNETT	Aug. 1, 1959 - Sept. 12, 1962	Sept. 13, 1962 - Jan. 1, 1963	Compulsory retirement date 1-1-63. Ill 6-22-62 - 1-1-63 on salary plan.

1/ IN ADDITION TO BACK PAY PERIOD.

TECHNICISTS	PERIOD OF CONTINUOUS SERVICE FOR CREDITING PENSION BENEFITS 1/	PERIOD OF BACK PAY ELIGIBILITY	EXPLANATIONS
SCHROEDER	Aug. 1, 1959 - Sept. 12, 1962	Sept. 13, 1962 - Jan. 13, 1965	--
ARCA	Aug. 1, 1959 - Sept. 12, 1962	Sept. 13, 1962 - Present	Not offered reinstatement yet.
CORANSON	Aug. 1, 1959 - Sept. 12, 1962	Sept. 13, 1962 - Jan. 18, 1965	--
JENSEN	Aug. 1, 1959 - Sept. 12, 1962	Sept. 13, 1962 - Jan. 18, 1965	--
CAPPS	Aug. 1, 1959 - Sept. 12, 1962	Sept. 13, 1962 - Jan. 1, 1963	Compulsory retirement date 1-1-63.
LONGNECKER	Aug. 1, 1959 - Sept. 12, 1962	Sept. 13, 1962 - Jan. 18, 1965	--
BRADFORD	Aug. 1, 1959 - Sept. 12, 1962	Sept. 13, 1962 - Jan. 18, 1965	--
FUSARE	Aug. 1, 1959 - Sept. 12, 1962	Sept. 13, 1962 - Jan. 18, 1965	--
PRICE	Aug. 1, 1959 - July 1, 1961; March 1, 1962 - Sept. 12, 1962	Sept. 13, 1962 - Jan. 18, 1965	Out 7-1-61, reduction in shop; in 3-1-62 - added job on roofing move to Martinez.
CURNIGHAN	Aug. 1, 1959 - July 1, 1961; June 22, 1962 - Sept. 12, 1962	Sept. 13, 1962 - Jan. 18, 1965	Out 7-1-61, reduction in shop; in 6-22-62-replaced Bennett who was ill.
RAINERI	Aug. 1, 1959 - July 1, 1961; Sept. 10, 1962 - Sept. 12, 1962	Sept. 13, 1962 - Jan. 18, 1965	Out 7-1-61, reduction in shop; in 9-10-62 - replaced Cruze who was ill.
REIHL	Aug. 1, 1959 - July 1, 1961	Sept. 15, 1962 - Jan. 18, 1965	Out 7-1-61, reduction in shop; in 9-15-62 to replace Crispino who was ill.
O'LEARY	Aug. 1, 1959 - July 1, 1961	Jan. 1, 1963 - Jan. 13, 1965	Out 7-1-61, reduction in shop; in 1-1-63 on retir. out of Gronberg.

1/ IN ADDITION TO BACK PAY PERIOD

BOARD EXHIBIT NO. 2 PENSION BENEFITS AND BACK PAY ELIGIBILITY

MACHINISTS
PERIOD OF CONTINUOUS SERVICE FOR
CREDITING PENSION BENEFITS 1/

PERIOD OF BACK PAY ELIGIBILITY

EXPLANATIONS

MACHINISTS	PERIOD OF CONTINUOUS SERVICE FOR CREDITING PENSION BENEFITS 1/	PERIOD OF BACK PAY ELIGIBILITY	EXPLANATIONS
PONTES	Aug. 1, 1959 - July 1, 1961	Jan. 1, 1963 - Jan. 18, 1965	Out 7-1-61, linoleum shop; in 1-1-63 on retirement of Holmes.
LIPPERT	Aug. 1, 1959 - July 1, 1961	Jan. 1, 1963 - Jan. 18, 1965	Out 7-1-61, linoleum shop; in 1-1-63 on retirement of Crispino.
VANDERBECK	Aug. 1, 1959 - July 1, 1961	Jan. 1, 1963 - Jan. 18, 1965	Out 7-1-61, linoleum shop; in 1-1-63 on retirement of Hamidy.
WEISMILLER	Aug. 1, 1959 - July 1, 1961	Jan. 1, 1963 - Jan. 18, 1965	Out 7-1-61, linoleum shop; in 1-1-63 on retirement of J. P. Johnson.
AIELLO	Aug. 1, 1959 - July 1, 1961	April 1, 1963 - April 15, 1963; March 1, 1964 - Jan. 18, 1965	Out 7-1-61, linoleum shop; in 4-1-63 on retirement of Wittorff; out 4-15-63 on Cruze's return from illness; in 3-1-64 on Nash's retirement.
HICKS	Aug. 1, 1959 - July 1, 1961	--	Out 7-1-61, linoleum shop.
HALL	Aug. 1, 1959 - July 1, 1961	--	Out 7-1-61, linoleum shop.
HOVAN	Aug. 1, 1959 - July 1, 1961	--	Out 7-1-61, linoleum shop.
SWISHER	Aug. 1, 1959 - October 1, 1960; June 1, 1961 - July 1, 1961	--	Out 10-1-60, floor covering; in 6-1-61 on retirement of Fuller; out 7-1-61, linoleum shop.
YOECH	Aug. 1, 1959 - Oct. 1, 1960	--	Out 10-1-60, floor covering.
HELPER	Aug. 1, 1959 - Sept. 12, 1962	Sept. 13, 1962 - Jan. 18, 1965	--
RICKETHIER	Aug. 1, 1959 - Sept. 12, 1962	Sept. 13, 1962 - Jan. 18, 1965	--
OSWILL	Aug. 1, 1959 - Dec. 1, 1961	--	Out 12-1-61, storeroom.
BERGSTROM	Aug. 1, 1959 - July 1, 1961	--	Out 7-1-61, linoleum shop.
STEWART			

1/ IN ADDITION TO BACKPAY PERIOD

PAGE 4

BOARD EXHIBIT NO. 2

PENSION BENEFITS AND BACK PAY ELIGIBILITY

FACTORY HOUSE PENGERS	PERIOD OF CONTINUOUS SERVICE FOR CREDITING PENSION BENEFITS 1/	PERIOD OF BACK PAY ELIGIBILITY	EXPLANATIONS
LOVELL	Aug. 1, 1959 - Sept. 12, 1962	Sept. 13, 1962 - Jan. 18, 1965	--
HUGHES	Aug. 1, 1959 - Sept. 12, 1962	Sept. 13, 1962 - Oct. 1, 1964	Compulsory retirement date 10-1-64.
HAUZER	Aug. 1, 1959 - Sept. 12, 1962	Sept. 13, 1962 - Jan. 18, 1965	--
JOHNSON, E. T.	Aug. 1, 1959 - Sept. 12, 1962	Sept. 13, 1962 - Jan. 18, 1965	
KOVACEK	Aug. 1, 1959 - Sept. 12, 1962	Sept. 13, 1962 - Jan. 18, 1965	
FIREMEN			
OLSON	Aug. 1, 1959 - Sept. 12, 1962	Sept. 13, 1962 - Jan. 15, 1964; Oct. 1, 1964 to present	Out 1-15-64, automatic controls; in 10-1-64 on retirement of Hughes, automatic upgrading; not yet offered reinstatement.
HARRIS	Aug. 1, 1959 - Sept. 12, 1962	Sept. 13, 1962 - Jan. 15, 1964	--
VAH ZOEN	Aug. 1, 1959 - Sept. 12, 1962	Sept. 13, 1962 - Jan. 15, 1964	--
GLIFFIN (working foreman)	Aug. 1, 1959 - Sept. 12, 1962	Sept. 13, 1962 - Jan. 15, 1964	--
HALL	Aug. 1, 1959 - Sept. 12, 1962	Sept. 13, 1962 - Jan. 15, 1964	

1/ IN ADDITION TO BACKPAY PERIOD

[GENERAL COUNSEL'S EXHIBIT 3]



IN THE MATTER OF THE RETIREMENT PLAN OF THE

A RETIREMENT INCOME PLAN
FOR THE EMPLOYEES
OF
FIBREBOARD AND SUBSIDIARY COMPANIES



CONTAINER TRANSPORT COMPANY
FEDERAL CONTAINER COMPANY
FIBREBOARD PRODUCTS INC.
GLASS CONTAINERS, INC.
INDEPENDENT PAPER STOCK CO.
THE MARYLAND CONTAINER COMPANY
NEVADA SILICA SANDS, INC.
PRECISION ELECTROTYPE COMPANY

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GENERAL INDEX

HIGHLIGHTS OF THE FIBREBOARD RETIREMENT PLAN	PAGE 3
CHARTS FOR ESTIMATING RETIREMENT INCOME	PAGE 8
INDEX TO FIBREBOARD RETIREMENT PLAN	PAGE 14
FIBREBOARD RETIREMENT PLAN	PAGE 15
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3

HIGHLIGHTS of the FIBREBOARD RETIREMENT PLAN

THE "HIGHLIGHTS" SECTION of this booklet, including the charts, is not a part of the Plan, but is a brief summary giving informal comments upon some of the features of the Plan. No attempt has been made to cover all the provisions of the Plan in this Section.

THE FIBREBOARD RETIREMENT PLAN itself, starting at Page 15, is the only official document, and it contains all the provisions of the Plan, and, as such, must be relied upon for the final determination of any matters relating thereto.

THE PLAN is administered by the Retirement Plan Committee, 1709 Montgomery Street, San Francisco, California, in accordance with Section 25 of the Plan. If you have any questions about the Plan, you may consult your Personnel Department, or write to the Retirement Plan Committee.

THE SECTION NUMBERS in the following four pages refer to those in the Plan itself which begins on Page 15.

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HOW MUCH RETIREMENT INCOME WILL I GET

○ Retirement income is paid to you in monthly installments and is made up of: (Sections 9, 10, 11, 12, 13, 16)

(a) Past Service Benefits, if any, provided entirely by Company contributions. Past Service Benefits apply only to service prior to September 1, 1945.

(b) Current Service Benefits provided by Company contributions and members' deposits. Current Service Benefits apply to service during participation in the Plan, after September 1, 1945.

- Retirement income under the Fibreboard Retirement Plan is paid in addition to any benefits you may get under the Federal Social Security Act, and regardless of any other income you may have.
- The minimum retirement income payable at normal retirement date is: (Section 13)

\$25.00 a month	with 10 years of employment
27.00 a month	with 11 years of employment
29.00 a month	with 12 years of employment
31.00 a month	with 13 years of employment
33.00 a month	with 14 years of employment
35.00 a month	with 15 or more years of employment
- The normal form of retirement income provides regular monthly payments at normal retirement age during your life and ceases at your death. You may, however, make arrangements so that, at your death, income will be paid to a joint annuitant. A joint annuitant can be a spouse or dependent relative. Arrangements can be made to suit your needs on various types of income options that would be equal in value to the normal.

If you wish to select an income option and name a joint annuitant, you must inform the Retirement Plan Committee in writing so that they can approve it at least 3 years before you are 65.

A joint annuitant income option can be selected only if retirement takes place at age 65 or later. (Section 22)
- If you deposited more money in the Plan than you received in retirement income at the time of your death, the excess of your deposits over income received, plus interest, would be refunded to your beneficiary unless you had named a joint annuitant. (Sections 8, 14, 22)
- The charts on Pages 8, 9, 10, and 11 can be used to estimate your retirement income.

WHEN DOES MY RETIREMENT INCOME BEGIN?

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- Normal retirement income begins at age 65. (Section 17)
- After you have reached age 55 and have had 20 years of employment with the Company, you may retire at any time you wish. Under Earlier Retirement you have several income options: You may have your retirement income begin when you retire; you may put off taking it until you are 65; or you may choose to take it at any time between the date you retire and age 65.

If you retire earlier but do not have retirement income begin until age 65, you will receive the full amount of income accumulated at the date of retirement. If you take the retirement income before age 65, it is reduced in accordance with your age when you begin receiving it, because income would be paid over a longer period of time. (Sections 15 and 20)
- If you become totally and permanently disabled, and if you have had 15 years of employment with the Company when disability begins, you are entitled to retirement income. A doctor's certificate is required to establish that the disability is both total and permanent.

Your income under the disability provision would be the amount of retirement income credited to you at the date disability began, reduced in accordance with your age when payments begin. The method of payment of this income is determined by the Retirement Plan Committee. (Sections 15 and 21)
- Normal retirement age is 65; however, upon request of the Board of Directors, a member may, if he consents to do so, continue to work for an additional period. (Section 16)

- Proof of age is necessary because the amount of money the Company pays into the Trust Fund to provide your retirement income depends upon your age. To keep the fund on a sound basis the records must be correct.

A proof of date of birth should be given to the Retirement Plan Committee as soon as possible after you join the Plan, because sometimes it is harder to get proof as time goes by. Proof will also be required by the Social Security Board when you apply for Federal Old Age retirement benefits, and you might need proof for other purposes.

Consult with your Personnel Department as to what is acceptable type of proof. (Section 23)

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WHERE DOES THE MONEY FOR THE PLAN COME FROM?

- The cost of the Plan is met by your deposits and Company contributions. The Company pays all the cost of the Plan in excess of cost that is met by your deposits. (Section 9)
- You pay into the Plan each year 2% of the first \$3,000 you earn and 1% of anything you earn over that. Your deposits are taken by payroll deduction. (Section 8)
- Your deposits and the Company contributions are paid to the Trustee, and the Trustee holds and invests these funds for the benefit of the members of the Plan. The Wells Fargo Bank & Union Trust Co. of San Francisco is the Trustee for the Fibreboard Retirement Plan. (Section 26)
- Your deposits in the Plan earn interest at the rate of 2% a year, compounded annually, and this interest is credited to your account annually. (Section 8)
- You can't lose. If you withdraw from the Plan or terminate your employment, your deposits, plus interest, are refunded to you. (Section 8)
- If you should die while you are a member of the Plan, and before retirement, all your deposits plus interest would be refunded to your beneficiary. (Section 8)
- You may name anyone you wish as your beneficiary, and you may change your beneficiary at any time on written notice to the Retirement Plan Committee upon forms that you can get from your Personnel Department or from the Retirement Plan Committee. (Section 7)
- The Company cannot withdraw any of its contributions from the Trust Fund. (Section 26)
- The Plan has been approved by the United States Treasury Department. An actuarial firm determines the amounts needed to keep the Plan financially sound, and the accounts of the Plan are examined each year by a firm of independent auditors. All of the expenses of operating the Plan are paid by the Company and not charged to the Trust Fund. (Section 25)

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WHEN AND HOW CAN I JOIN THE PLAN?

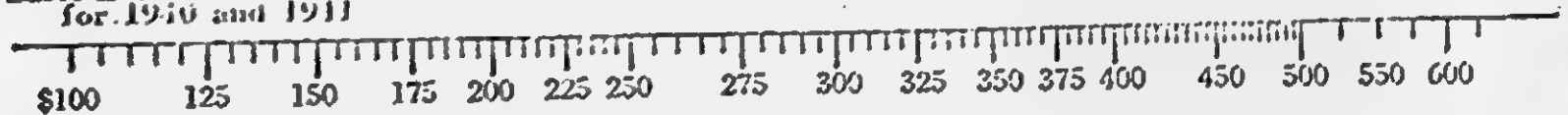
- After five years of employment with Fibreboard Products Inc. or any subsidiary company, you are eligible to join the Plan. (Section 6)

- If you do not join the Plan when eligible, and you remain in the employ of the Company, you may enroll at any time you wish. However, in order to be eligible for the minimum retirement income, you must join the Plan within thirty days after becoming eligible and participate continuously to normal retirement date. (Sections 7 and 13)
- If you leave the employ of the Company and later are re-employed, you are considered a new employee and must wait five years from the date of re-employment to join the Plan. (Section 5)
- If you are away from work on an authorized leave of absence, your employment is not broken. (Sections 5 and 7)
- If you are on a Company layoff, your employment is not broken provided you return to work within 10 days from the end of the layoff period, and provided the layoff period is not more than twelve consecutive months. (Section 5)
- Service with the Armed Forces does not break your employment if you return to the employ of the Company within three months after your release or discharge from the Armed Forces. (Sections 5 and 7)
- You do not have to join the Plan. If you do not wish to join when you are eligible, you are asked to sign a waiver. (Section 7)
- All you have to do to join the Plan is sign an enrollment form that indicates you agree to the terms of the Plan, authorize the payroll deduction, and name a beneficiary. (Section 7)

★ ★ ★

If you have any questions see your Personnel Department or write the Retirement Plan Committee.

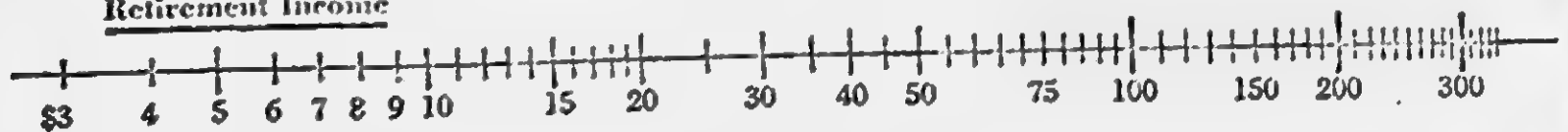
Average Monthly Earnings
for 1910 and 1911



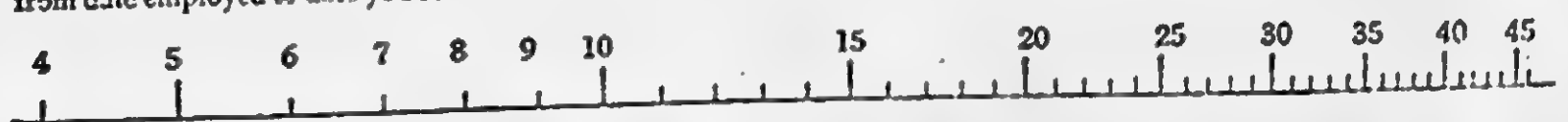
MONTHLY PAST SERVICE RETIREMENT INCOME CHART
Fibreboard Retirement Plan

To find the estimated amount of monthly Past Service Retirement Income, draw a straight line from "Average Monthly Earnings" to "Number of Years." Your estimated Past Service Retirement Income is shown where the line crosses "Retirement Income."

Estimated Monthly Past Service Retirement Income



Number of Years from date employed to September 1, 1915, less five years.
(If you were on leave of absence on September 1, 1915, use the number of years from date employed to date you returned from leave of absence, less five years.)



ESTIMATE OF PAST SERVICE RETIREMENT INCOME

Example: If you were employed September 1, 1925 and joined the Retirement Plan September 1, 1945—

Number of Years of Past Service from 1925 to 1945:

20 years (less 5 years)..... 15

Average Monthly Earnings for 1940 and 1941.....\$215.00

A straight line drawn from 15 to \$215 crosses the "Retirement Income" line at 24—

Estimated monthly Past Service Retirement Income.....\$ 24.00

(Over for Current Service)

Your
Estimate

ESTIMATE OF CURRENT SERVICE RETIREMENT INCOME

Example: If you were employed September 1, 1925 at the age of 20 and you joined the Retirement Plan September 1, 1945 (you would be 65 in 1970)—

Number of Years of Current Service from 1945 to 1970.... 25

Average Monthly Earnings from 1945 to 1970.....\$325.00

A straight line drawn from 25 to \$325.00 crosses the "Retirement Income" line at 75—

Estimated Monthly Current Service Retirement Income....\$ 75.00

Estimated Monthly Past Service Retirement Income.....\$ 24.00

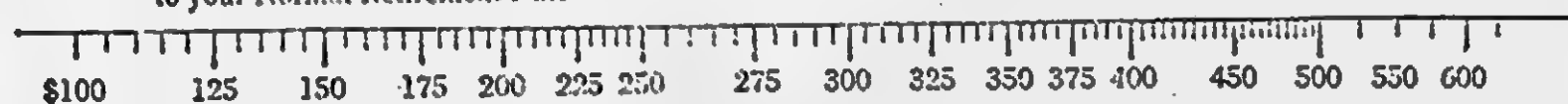
Estimated Monthly Total Retirement Income.....\$ 99.00

Your
Estimate

[If your combined Past Service and Current Service Retirement Income is less than \$25 a month, check the Minimum Retirement Income Table in Section 13 on Page 25.]

Don't forget your Fibreboard Retirement Plan income is paid in addition to Federal Old Age Benefits.

Average Monthly Earnings from date you joined Plan
to your Normal Retirement Date

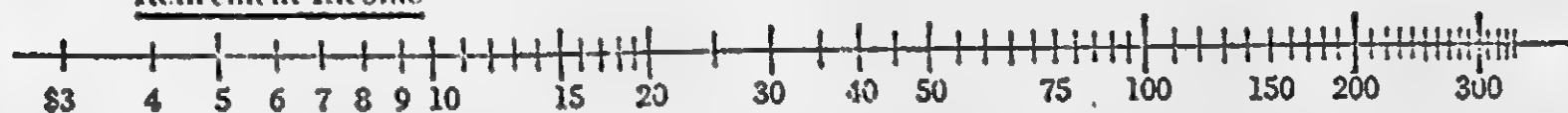


MONTHLY CURRENT SERVICE RETIREMENT INCOME CHART

Fibreboard Retirement Plan

To find the estimated amount of your monthly Current Service Retirement Income, draw a straight line from your "Average Monthly Earnings" to "Number of Years." Your estimated Current Service Retirement Income at Normal Retirement Date is shown where the line crosses "Retirement Income." Your total estimated Fibreboard Retirement Plan Income equals Current Service Income plus Past Service Income.

Estimated Monthly Current Service
Retirement Income



Number of Years from date you joined Plan
to your Normal Retirement Date



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Notes

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Fibreboard Retirement Plan

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FIBREBOARD RETIREMENT PLAN

1. Name and Object of Plan.

The name of this Plan is "Fibreboard Retirement Plan."

The object of the Plan is to provide a method whereby Fibreboard Products Inc. and its participating subsidiaries, together with their respective eligible employees, may provide definite retirement income benefits for such employees to supplement the benefits provided under the Federal Social Security Act.

2. Effective Date.

The effective date of the Plan shall be September 1, 1945.

3. Scope of Plan.

(a) The Plan shall apply to eligible employees of Fibreboard Products Inc. (a Delaware corporation) and its subsidiaries named herein as participating subsidiaries. Such participating subsidiaries are:

Glass Containers, Inc.	(a California corporation)
Independent Paper Stock Co.	(a California corporation)
Precision Electrotape Company	(a California corporation)
Federal Container Company	(a Pennsylvania corporation)
The Maryland Container Company	(a Maryland corporation)
Container Transport Company	(a California corporation)
Nevada Silica Sands, Inc.	(a Nevada corporation)

(As amended, effective September 1, 1945.)

(b) Participating subsidiaries may be added or withdrawn by appropriate amendment of the Plan, as provided in Section 27. In the event of withdrawal from the Plan of any participating subsidiary, such withdrawal shall be deemed to be a termination of the Plan as to such participating subsidiary. Thereupon there shall be allocated a portion of the funds in the custody of the Corporate Trustee, such allocation to be made in accordance with a nondiscriminatory formula, taking into consideration the age, sex, and accredited service of the members of said subsidiary and the contributions of said subsidiary and its members and amounts paid as benefits to its members, annuitants and joint annuitants. Said amount so allocated shall be divided into two portions, in accordance with a similar nondiscriminatory formula, one of which portions shall be allocable to the members of said subsidiary who on said date of termination or within thirty (30) days thereafter shall be employed by one of the continuing Employers, and who shall not have withdrawn their contributions with interest after such termination; and the other of which shall be allocable to the remaining members, annuitants and joint annuitants of said subsidiary. The first portion so allocated shall remain a part of the funds in the custody of the Corporate Trustee to be held and administered subject to the provisions of the Trust and the Plan. The second portion so allocated shall be applied for the benefit of said remaining members, annuitants and joint annuitants of said subsidiary in the same manner as provided in Section 27 in the case of a complete termination of the Plan. *(As amended, effective September 1, 1945.)*

(c) All acts required of the Employer hereunder shall be performed by Fibreboard Products Inc. for itself and for each of its participating subsidiaries, and the cost of the Plan shall be equitably apportioned between Fibreboard Products Inc. and each participating subsidiary.

4. Definitions.

(a) "Employer" is defined as the employing corporation; namely, Fibreboard Products Inc. or one of its participating subsidiaries.

(b) A "member" is defined as an employee who is participating in the Plan.

(c) An "annuitant" is defined as a former member who is either receiving retirement income under the Plan or who is entitled to receive retirement income commencing as of some future date.

(d) "Subsidiary" is defined as a corporation, fifty-one per cent (51%) or more of whose shares entitled to vote are owned by Fibreboard Products Inc. or one of its subsidiaries.

(e) "Predecessor corporations" are defined as The Parafine Companies, Inc. and Crown Zellerbach Corporation, and their subsidiaries or predecessors, and all other corporations substantially all of whose stock or assets were acquired by them or any of them or by Fibreboard Products Inc. or any of its participating subsidiaries prior to September 1, 1945.

(f) "Board of Directors" is defined as the then current Board of Directors of Fibreboard Products Inc.

(g) "Compensation" is defined as all compensation of every kind and character which the member has received or shall receive from the Employer as a part of his regular rate or basic formula of compensation, including overtime pay, commissions or other contingent compensation regularly included in determining such member's rate or basic formula of compensation, but excluding any non-recurring or contingent compensation not regularly paid in accordance with a rate or basic formula of compensation. All bonuses or commissions paid to an employee as a part of his regular rate of compensation pursuant to his contract of employment shall be included as "compensation" for the purposes hereof; but all other bonuses or commissions, unless paid in the same proportion of basic compensation to all employees, shall be excluded. *(As amended, effective September 1, 1945.)*

(h) "Totally and permanently disabled" is defined to mean that a member has become incapable of engaging in any occupation or performing any work for profit, and that it is reasonably certain that such incapacity will exist during the remainder of his life.

(i) Masculine pronouns as used herein include both men and women, unless the context indicates otherwise.

5. Service.

The determination of service for which a member shall receive credit under the Plan shall be in accordance with this section, and shall not be governed by the Employer's policy of recognizing service for the purpose of awarding service emblems.

(a) Such service shall include all employment which occurred prior to September 1, 1945 with the Employer and its participating subsidiaries, including interruptions of service and layoffs not exceeding three (3) months each, but excluding such portion of each interruption of service

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or layoff that exceeded three (3) months, (except that the full period of any interruption of service or layoff due to industrial injury or sickness, even though exceeding three (3) months, shall be included as service) and such employment with predecessor corporations as herein defined, of employees who were employed by such predecessor corporations at the time of acquisition by the Employer or its subsidiaries of the stock or assets of such predecessor corporations or a substantial part thereof. *(As amended, effective September 1, 1945.)*

(b) Such service shall include all continuous employment which occurs subsequent to September 1, 1945 with the Employer and its subsidiaries, Resignation or discharge from service with the Employer or its subsidiaries, or interruption of service for a continuous period of one (1) month or more, which occurs subsequent to September 1, 1945, shall be deemed to break the employee's continuous employment, and if the employee is subsequently re-employed, he shall not receive credit for any service prior to the date of such re-employment. Continuous employment shall be deemed not to be broken by absence during seasonal or other temporary layoffs at the request of the Employer or any of its participating subsidiaries, provided that the employee returns to active employment at the end of the layoff period or within ten (10) days thereafter, and provided further that such layoff period shall not exceed twelve (12) consecutive months.

(c) Any employee who is now or shall in the future be on leave of absence shall receive credit for service for such period of absence, provided that he returns to active employment with the Employer or one of its participating subsidiaries within the period allowed by such leave of absence, or is unable to return to active employment within that period because of ill health as shown by a certificate of a physician satisfactory to the Retirement Plan Committee. *(As amended, effective March 6, 1947.)*

(d) Any former employee who left the employ of the Employer or one of its participating subsidiaries to serve in the armed forces of the United States or one of its allies, or any employee who shall so enter said service, shall receive credit for past service during such period of absence, provided that he is re-employed within three (3) months after his release or discharge from the armed forces.

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6. Eligibility of Employees.

The following employees of the Employer shall be eligible to participate in the Plan, except those who are customarily employed for less than twenty (20) hours per week or for less than five (5) months per year:

(a) Such employees who have completed five (5) years or more of service on or before September 1, 1945 shall be eligible to commence participation in the Plan on September 1, 1945.

(b) Such employees who have not completed five (5) years of service on or before September 1, 1945, and employees whose employment begins after September 1, 1945, shall become eligible to commence participation in the Plan on the first day of the pay roll period next following their completion of five (5) years of service.

(c) Such employees of any corporation (which shall include partnership and individual businesses) which may be joined by merger, consolidation or purchase of assets with the Employer subsequent to September 1, 1945 shall become eligible to commence participation in the Plan on the

first day of the pay roll period next following their completion of five (5) years of service, which shall include continuous employment with such corporation prior to the date of its acquisition by the Employer.

(d) Officers or directors or members of the Executive Committee of the Employer who are also employees shall be eligible to participate in the Plan on the same basis as other employees.

7. Participation in the Plan.

(a) On or before July 1, 1945 the Plan shall be communicated to all persons then employed by the Employer, and shall subsequently be communicated to persons employed after that date, in such manner as the Retirement Plan Committee shall deem suitable. Eligible employees may obtain enrollment forms from the Secretary of the Retirement Plan Committee. Participation in the Plan shall be optional with eligible employees. In order to commence participation in the Plan, an eligible employee must first enroll in the Plan by filling out and signing an enrollment form in which he agrees to the provisions of the Plan, authorizes the required pay roll deductions, and names a beneficiary or beneficiaries. The member shall have the right to change the beneficiary or beneficiaries by written notice to the Retirement Plan Committee on a form provided by the Retirement Plan Committee for that purpose. The spouse must join in and sign the enrollment form and notice of change in beneficiary, and the enrollment and change in beneficiary shall become effective upon written notice of receipt of same from the Retirement Plan Committee to the employee.

(b) Any employee who is in active employment with the Employer and eligible to commence participation on September 1, 1945 shall be considered to have commenced participation as of that date if he enrolls in the Plan on or before September 1, 1945 and pays the required deposits under the Plan commencing with the first pay roll period which ends in September, 1945. Such employee must commence participation as of September 1, 1945 in order to be eligible to receive past-service benefits under the Plan, otherwise he shall be eligible to receive only current-service benefits accruing during his participation in the Plan.

(c) Any employee who is on leave of absence on September 1, 1945, shall be eligible to receive past-service benefits provided that he returns to active employment with the Employer within the period allowed by such leave of absence, and provided further that he is eligible to and does commence participation as of the date of his return to active employment. Such employee shall be considered to have commenced participation as of the date of his return to active employment if he enrolls in the Plan at any time within two (2) months after date of his return to active employment and pays the required deposits under the Plan commencing with the date of his return to active employment. If such employee does not commence participation as of the date of his return to active employment, he shall be eligible to receive only current-service benefits accruing during his participation in the Plan.

(d) Any former employee who left the employ of the Employer to serve in the armed forces of the United States or one of its allies and who is in such service on September 1, 1945, or any employee who subsequently so enters said service, shall be eligible to receive past-service benefits, provided that he is re-employed by the Employer within three (3) months after his release or discharge from the armed forces, and provided further that he is eligible to and does commence participation as of the date of his

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employment. Such employee shall be considered to have commenced participation as of the date of his re-employment if he enrolls in the Plan at any time within two (2) months after the date of his re-employment and pays the required deposits under the Plan commencing with the date of his re-employment. If such employee does not commence participation as of the date of his re-employment, he shall be eligible to receive only current-service benefits accruing during his participation in the Plan.

(e) Any employee who is seventy (70) years of age or more on September 1, 1945, but who is otherwise eligible, may commence participation as of that date by enrolling in the Plan on or before September 1, 1945, but only for the purpose of receiving past-service benefits, and he shall not pay any deposits nor accrue any current-service benefits under the Plan.

(f) Any employee who becomes eligible subsequent to September 1, 1945, or any employee who was eligible on September 1, 1945 and who did not enroll when first eligible, may enroll in the Plan at any time after becoming eligible and shall commence participation on the first day of the pay roll period next following his enrollment in the Plan. Such employee shall not be eligible to receive past-service benefits, except as provided in paragraphs (c) and (d) of this section.

8. Members' Deposits.

During his participation in the Plan, each member shall be required to deposit, by means of pay roll deductions, two per cent (2%) of the first three thousand dollars (\$3,000) of his compensation received during each calendar year, or portion thereof, of participation in the Plan, and four per cent (4%) of that portion of such compensation which is in excess of three thousand dollars (\$3,000).

These deposits shall be refunded, with interest at the rate of two per cent (2%) per annum, compounded annually, as follows:

(a) A member may withdraw from the Plan at any time and have his deposits, with interest, refunded to him, but he shall thereby forfeit all benefits under the Plan. He may subsequently re-enroll and commence participation in the Plan if he is eligible, but he shall thereafter accrue only current-service benefits.

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(b) Upon termination of his employment, a member who is not eligible to receive retirement income payments under the Plan shall have his deposits, with interest, refunded to him, and thereupon he shall forfeit all benefits under the Plan. Upon termination of his employment, a member who is eligible to receive the retirement income payments provided for in Section 20 and does not elect to receive such payments shall receive his deposits, with interest, in lieu of such payments, and thereupon he shall forfeit all benefits under the Plan.

(c) Upon the death of a member prior to his retirement, such member's deposits, with interest, shall be refunded to his named beneficiary. Upon the death of an annuitant, there shall be refunded to the annuitant's named beneficiary the excess, if any, of the annuitant's deposits, with interest to retirement date, over the total retirement income payments made to such annuitant, provided the annuitant has not selected either optional form of retirement income provided in Section 22. If there is no named beneficiary to receive such refund payments, then such payments shall be made to the member's or annuitant's estate.

9. Retirement Income.

After his normal retirement date, an annuitant shall be entitled to receive an annual retirement income, payable in monthly installments equal to one-twelfth (1/12) of such annual retirement income, and consisting of:

(a) Annual past-service benefits, if any, to be provided wholly by the Employer's contributions; and

(b) Annual current-service benefits, if any, to be provided in part by the Employer's contributions and in part by the annuitant's deposits.

The first payment of such retirement income shall be made as of the last day of the calendar month in which his normal retirement date shall occur, and the last payment shall be made to the annuitant's beneficiary or annuitant's estate as of the end of the calendar month in which the death of the annuitant occurs.

Such retirement income shall be in addition to and separate from the benefits under the Federal Social Security Act.

10. Past Service.

Past service shall be such service of members who are eligible to receive past-service benefits, as occurred prior to the date as of which a member commenced participation in the Plan, except that any employee who shall enter the armed forces after becoming a member in the Plan, and who shall be entitled to credit for service for such period of absence in accordance with Section 5 (d), shall receive credit for past service for such period of absence.

11. Past-Service Benefits.

(a) A member's annual past-service benefits shall be three-fourths per cent (¾%) of the first three thousand dollars (\$3,000) of past-service compensation, plus one and one-half per cent (1½%) of that portion of past-service compensation which is in excess of three thousand dollars (\$3,000), for each year of past-service except the first five (5) years. Fractions of years shall be accounted for proportionately. *(As amended, effective January 1, 1951. Note: The amendment also provided that it did not effect or change in any way either monthly or lump sum retirement income payments paid or becoming payable prior to January 1, 1951.)*

(b) The past-service compensation, upon which past-service benefits shall be based, shall be members' average annual compensation during the calendar years 1940 and 1941, with the following exceptions:

(i) In the event a member files with the Retirement Plan Committee a written claim that his annual compensation in the year 1940 and/or the year 1941 was reduced because of a reduction from his normal rate of compensation or because of a reduction from his normal working time, then the Retirement Plan Committee shall, if it finds that the claim is justified, adjust his past-service compensation so that it shall fairly represent his normal compensation and normal working time for those years, provided that such written claim is filed at the time of enrollment or within thirty (30) days after the member shall have received a written statement from the Retirement Plan Committee stating his annual compensation during the calendar years 1940 and 1941.

(ii) In the case of employees on leave of absence or in service with the armed forces who are eligible to receive past-service benefits in accordance with Section 7(c) and Section 7(d), and who entered the

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Employer's employ subsequent to January 1, 1940, the Retirement Plan Committee shall determine the past-service compensation so that it shall fairly represent the employee's normal compensation and normal working time in the first two years of his employment by the Employer, except as provided in (iii) below. *(As amended, effective January 1, 1951. See also note at the end of Section 11 (a).)*

(iii) In the case of employees who leave the employ of the Employer on or after June 26, 1950 to serve with the armed forces and who are eligible to receive past-service benefits in accordance with Section 7(d), including those who entered the Employer's employ before as well as after January 1, 1940, the Retirement Plan Committee shall determine the past-service compensation so that it shall fairly represent the employee's normal compensation and normal working time as of the date on which such employee left the employ of the Employer for such service. *(As added, effective January 1, 1951. See also note at the end of Section 11 (a).)*

12. Current-Service Benefits.

(a) A member's annual current-service benefits shall be three-fourths per cent ($3\frac{3}{4}\%$) of the first three thousand dollars (\$3,000) of current-service compensation, plus one and one-half per cent ($1\frac{1}{2}\%$) of that portion of current-service compensation which is in excess of three thousand dollars (\$3,000), for each calendar year, or portion thereof, while participating in the Plan prior to such member's normal retirement date.

(b) The current-service compensation, upon which current-service benefits shall be based, shall be the compensation received during each calendar year, or portion thereof, of participation in the Plan.

13. Minimum and Maximum Benefits.

(a) Any annuitant

- (i) who has completed ten (10) years or more of continuous service, and
- (ii) who enrolled in the Plan not later than the thirtieth day after the date on which he became eligible (or not later than September 1, 1948 with respect to members who became eligible prior to August 1, 1948), and
- (iii) who commenced participation in the Plan pursuant to such enrollment and continuously participated in the Plan thereafter until his normal retirement date

shall be entitled after his normal retirement date to receive under the Plan, as a minimum, a retirement income, dependent upon the number of years of continuous service completed, as follows:

Years of continuous service completed	Minimum retirement income per month
10	\$25.00
11	27.00
12	29.00
13	31.00
14	33.00
15 or more	35.00

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Any interruption in participation in the Plan resulting from optional retirement under Section 20 hereof, where the annuitant is re-employed and re-enrolls in the Plan under Section 19 hereof within thirty (30) days after he becomes eligible for such re-enrollment, shall not be deemed to break the continuity of participation in the Plan for the purposes of subsection (iii) above. *(As amended, effective January 1, 1951. See also note at the end of Section 11(a).)*

(b) The maximum retirement income which any annuitant may receive under the Plan shall be one thousand dollars (\$1,000) per month. Whenever the annual past-service benefits and annual current-service benefits accrued for the benefit of any member entitle such member to a retirement income of one thousand dollars (\$1,000) per month commencing at his normal retirement date, no further deposits shall be made by such member.

14. Death Benefits.

No death benefits shall be payable under the Plan, other than the refund of deposits described in Section 8 (c).

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15. Vesting.

No portion of the retirement income benefits provided under the Plan shall vest in the member prior to his normal retirement date, except as provided in Sections 20 and 21.

16. Equivalent Payments.

In the event that the retirement income payable shall be less than five dollars (\$5) per month, the actuarial equivalent of such retirement income shall be paid in a lump sum.

In the event that the retirement income payable to an annuitant is five dollars (\$5) per month or more, but less than ten dollars (\$10) per month, the Retirement Plan Committee shall have the right at its discretion, if the annuitant makes a request therefor within the time stated below, to pay in a lump sum the actuarial equivalent of his retirement income calculated as of the time such lump sum payment is made. As to annuitants whose first income payment becomes payable after January 1, 1951, such request must be made prior to the date on which such first income payment becomes payable. As to annuitants who, as of January 1, 1951, are receiving such retirement income payments, such request must be made prior to March 1, 1951. *(As amended, effective January 1, 1951. See also note at the end of Section 11(a).)*

17. Normal Retirement Date.

Each member shall be retired on his normal retirement date, unless his retirement has been deferred in accordance with Section 12, or unless he has retired earlier in accordance with Sections 20 or 21. The normal retirement date of both men and women who are members on September 1, 1945, or who become members thereafter, shall be as follows:

(a) For members who have not yet attained age sixty (60) at September 1, 1945, the normal retirement date shall be the first day of the calendar month next following the attainment of age sixty-five (65).

(b) For participants who have attained age sixty (60) but have not yet attained age sixty-five (65) at September 1, 1945, the normal retirement date shall be the first day of any calendar month elected by the participant

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following the attainment of age sixty-five (65), but not later than the first day of the calendar month next following the attainment of the fifth birthday subsequent to September 1, 1945. (*As amended, effective September 1, 1945.*)

(c) For participants who have attained age sixty-five (65) but have not yet attained age seventy (70) at September 1, 1945, the normal retirement date shall be the first day of any calendar month elected by the participant, but not later than the first day of the calendar month next following the attainment of age seventy (70). (*As amended, effective September 1, 1945.*)

(d) For members who have attained age seventy (70) at September 1, 1945, the normal retirement date shall be September 1, 1945.

18. Deferred Retirement.

Upon request of the Board of Directors and with the consent of the member, a member may remain in active employment after his normal retirement date for a period terminating at the end of any calendar month and not to exceed twelve (12) months, and for such additional period, or periods, terminating at the end of any calendar month, as the Board of Directors may determine, no one of which periods shall exceed twelve (12) months.

In cases where a member's retirement is so deferred, his deposits under the Plan shall cease at the commencement of the pay roll period next following his normal retirement date, and thereafter he shall not accrue any current-service benefits. The first payment of his monthly retirement income under the Plan shall be made as of the last day of the calendar month in which his normal retirement date shall occur.

19. Re-employment After Retirement.

In the event that the Employer shall re-employ an annuitant who has not yet attained his normal retirement date at the time of re-employment, his retirement income payments shall cease at the end of the month in which he is re-employed (or, where re-employment occurs prior to January 1, 1951, such payments shall cease on January 1, 1951). Such re-employed annuitant may, at any time during re-employment but prior to attainment of his normal retirement date, resume participation in the Plan by filling out and signing a new enrollment form in the same manner provided in Section 7(a) hereof, in which case deposits shall again be made by such re-employed annuitant and further current-service benefits shall accrue to his credit under the Plan. When such re-employed annuitant shall attain his normal retirement date or shall retire at an earlier date under the provisions of Section 20 hereof, whichever shall first occur, he shall again receive retirement income payments recalculated to take into account additional current-service benefits, if any, accrued after re-employment, the amount of retirement income already paid to him, and his increased age.

In the event that the Employer shall re-employ an annuitant who has attained his normal retirement date prior to the time of re-employment, his retirement income payments shall be continued during the period of such re-employment, but during such period he shall not make any deposits nor accrue any current-service benefits. (*As amended, effective January 1, 1951. See also note at the end of Section 11 (a).*)

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20. Optional Earlier Retirement.

Any member who has attained age fifty-five (55) and who has completed twenty (20) years or more of service may be retired prior to his normal retirement date, upon filing a written request with the Retirement Plan Committee. Such earlier retirement date shall be the first day of any calendar month specified in the request which is subsequent to the date such request is made. Any member who is retired prior to his normal retirement date, in accordance with this section, must at the time of his retirement elect to receive one of the following optional retirement income payments:

(a) The full retirement income accrued to the annuitant's credit at such date of earlier retirement, with payments commencing on the last day of the calendar month next following his attainment of age 65, and continuing for his life, provided that if the annuitant has already attained the age of 65 on his earlier retirement date, payments shall commence on the last day of the calendar month in which his earlier retirement occurs; or

(b) A reduced monthly retirement income, with payments commencing as of the last day of such calendar month as he names in his election between his earlier retirement date and his normal retirement date and continuing for his life, but identical in actuarial value as of his earlier retirement date to the amounts described in option (a).

In the event that a member's employment with the Employer is terminated for any reason other than by death, he shall be entitled to receive the benefits provided in this section, provided that at the time of such termination of employment he has attained age fifty-five (55) and has completed twenty (20) years or more of service, and further provided that he elects one of the optional retirement income payments provided in this section.

21. Disability.

Any member who becomes totally and permanently disabled after the completion of fifteen (15) years or more of service shall be entitled to receive the actuarial equivalent of the retirement income commencing at his normal retirement date accrued to his credit on the date of such disability. The date of commencement, the number of such payments, and the amount of each payment shall be determined by the Retirement Plan Committee after giving consideration to the member's needs. The Retirement Plan Committee's determination of whether the member is totally and permanently disabled shall be conclusive in each case.

22. Retirement Income Options.

The normal form of retirement income shall be an annuity which provides full monthly retirement income payments continuing during the annuitant's life and ceasing with the month of his death, with refund of deposits as provided under Section 8 (c). In lieu of this annuity, a member who retires on or after his normal retirement date may select either of the following optional forms of retirement income, which shall be equivalent in actuarial value to the normal form of annuity:

(a) A full joint and survivor annuity which provides reduced monthly retirement income payments during the annuitant's life and, upon his death, continues payments in the same amount to one other person, hereinafter referred to as the "joint annuitant," during the life of such joint annuitant, without refund of any portion of the annuitant's deposits upon his death after normal retirement date.

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(b) A modified joint and survivor annuity which provides reduced monthly retirement income payments during the annuitant's life and, upon his death, continues payments in one-half of the amount to the joint annuitant during the life of such joint annuitant, without refund of any portion of the annuitant's deposits upon his death after normal retirement date.

The selection of either optional form of retirement income shall not be effective unless it is made in writing by the member on forms supplied by the Retirement Plan Committee and filed with said committee at least three (3) years prior to the member's normal retirement date; provided that any member whose normal retirement date is prior to March 1, 1949 may select one of the optional forms of retirement income at any time prior to his retirement and prior to March 1, 1946.

The Retirement Plan Committee shall have the right at its discretion, if the member so requests, to pay the retirement income of any member who retires on or after his normal retirement date under any other form of annuity which is equivalent in actuarial value to the normal form of annuity. The form of such annuity must be agreed to in writing by the employee and approved in writing by the Retirement Plan Committee at least three (3) years prior to the member's normal retirement date.

Once an optional form of retirement income has been selected by a member, or another form of retirement income has been agreed upon by the member and the Retirement Plan Committee under this Section, the member may not revoke or change either the form of retirement income or any joint annuitant named therein, except with the written consent of the Retirement Plan Committee.

If the joint annuitant named by the member dies prior to the member's normal retirement date, the selection shall become inoperative and the member shall be considered to have elected a normal form of annuity.

A member shall not be entitled to name as a joint annuitant any person other than his spouse or a dependent relative of the member by blood, adoption or marriage, and if such joint annuitant, other than a spouse, is a minor at the time such joint annuitant is named, such joint annuitant shall not be entitled to receive any payments after attaining the age of twenty-one (21) years. *(As amended, effective January 1, 1951. See also note at the end of Section 11 (a).)*

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23. Proof of Age.

Proof of age satisfactory to the Retirement Plan Committee may be required of members and joint annuitants. After a member or joint annuitant has once so advised the Retirement Plan Committee as to his date of birth, no further correction shall be permitted without the consent of the Retirement Plan Committee. Any such permitted correction shall require proper actuarial adjustment of retirement benefits payable.

24. Inalienability of Benefits.

Except to the extent that the following may be contrary to the laws of any state having jurisdiction in the premises, no member, annuitant, joint annuitant, or beneficiary hereunder shall have the right to assign, transfer, encumber, or anticipate his interest in any retirement funds accumulated under the Plan and in any retirement income being paid therefrom, and such funds and income shall not in any way be subject to any legal process to levy upon or attach the same for the payment of any claim against any member, annuitant, joint annuitant or beneficiary.

25. Administration of the Plan.

The Plan shall be administered under the direction of the Board of Directors by a Retirement Plan Committee, which shall consist of not less than five (5) nor more than nine (9) members appointed by and holding office at the pleasure of the Board of Directors, and the decision of the majority of the number of members then in office shall constitute the final and binding act of the Retirement Plan Committee. The Retirement Plan Committee shall interpret, construe and apply all provisions of the Plan, and its decisions with respect thereto shall be final. Its duties, among others, shall include:

(a) It shall authorize the employment of such legal, actuarial, and other professional services as it may deem appropriate.

(b) It shall be responsible for compiling and maintaining personnel records necessary for the operation of the Plan.

(c) It shall authorize the payment of retirement incomes under the Plan and it shall instruct the Corporate Trustee to provide funds for that purpose.

(d) It shall approve the mortality tables, interest rates and other actuarial factors to be used in determining the requirements of the Plan.

All expenses incurred in the administration of the Plan, including legal, actuarial and trustee's fees and expenses, shall be paid by the Employer for the account of the Employer.

The members of the Retirement Plan Committee and the Employer and its officers and directors shall be entitled to rely upon all tables, valuations, certificates and reports furnished by any actuary, upon all certificates and reports made by any accountant, and upon all opinions given by any legal counsel, in each case selected or approved by said Committee; and the members of said Committee and the Employer and its officers and directors shall be fully protected in respect of any action taken or suffered by them in good faith in reliance upon any such tables, valuations, certificates, reports or opinions and all action so taken or suffered shall be conclusive upon each of them and upon all persons having or claiming to have any interest in or under the Plan; and no member of said Committee shall be personally liable by reason of any instrument made or executed by him or on his behalf as a member of said Committee, or for any mistake of judgment made by himself or any other member, or for any neglect, omission or wrongdoing of any other member or of anyone employed by said Committee, or for any loss unless resulting from his own willful misconduct.

26. Method of Funding.

A Corporate Trustee, acting under a trust agreement, shall be selected by the Board of Directors, and may be changed from time to time by the Board of Directors. The duties of such Corporate Trustee shall include the following:

(a) It shall receive from the Employer, the members' deposits and the Employer's contributions to the trust fund.

(b) It shall invest and reinvest the corpus and income of the trust fund.

(c) It shall receive all of the income from the trust fund.

(d) It shall pay to or for the account of the Retirement Plan Committee

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upon its written instructions the funds required for payments under the Plan.

(c) It shall maintain such records and accounts and shall render such financial statements and reports as may be required from time to time by the Retirement Plan Committee.

The Employer shall pay over to said trust fund from time to time such amounts as are deposited by members under the Plan.

Funds will be contributed by the Employer to said trust fund in amounts which, when added to the amounts which have been or are to be accumulated in the trust fund, including members' deposits, are actuarially determined as adequate to provide the retirement benefits set forth herein, and shall be paid by the Employer at such times and in such amounts as may be determined by the Board of Directors, subject to the right of discontinuance or termination as provided in Section 27. While the Employer expects to contribute such funds which, when added to the amounts accumulated through members' deposits, will secure the payment of retirement incomes under the Plan, the Employer does not guarantee to do so, and each member, annuitant, joint annuitant, and beneficiary shall look solely to the assets of the trust fund for payments under the Plan. The Employer does, however, guarantee to contribute sufficient funds to insure the return of the amounts deposited by each member, plus interest at two per cent (2%) per annum, compounded annually, as provided in Section 8.

Notwithstanding any other provisions of the Plan to the contrary, the contributions by the Employer for retirement benefits on behalf of members each of whom owns, directly or indirectly, more than ten per cent (10%) of the voting stock of the Employer, shall not in the aggregate exceed in any year thirty per cent (30%) of the contributions by the Employer for retirement benefits for all members. For the purpose hereof, an individual is considered as owning the stock owned by his spouse or minor lineal descendants.

Notwithstanding any other provision hereof or any amendment hereto to the contrary, at no time shall any assets of the trust fund revert to or be recoverable by the Employer, or be used for, or diverted to, purposes other than for the exclusive benefit of members, annuitants, joint annuitants and beneficiaries under the Plan, except such funds, if any, as may remain at termination of the trust after satisfaction of all liabilities with respect to members, annuitants, joint annuitants and beneficiaries under the Plan, and are due to erroneous actuarial calculations.

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27. Modification or Termination of Plan.

The Board of Directors reserves the right to alter, amend or terminate the Plan or any part thereof, in such manner as it may determine, and any such alteration, amendment, or termination shall take effect upon notice thereof from the Board of Directors to the Corporate Trustee; provided that no such alteration or amendment shall provide that the retirement income payable to any annuitant shall be less than that provided by his deposits, with interest at the rate of two per cent (2%) per annum, compounded annually, or affect the right of any member to receive a refund of his deposits, with interest, as provided in Section 8, and provided further that no alteration, amendment or termination of the Plan or any part thereof shall permit any part of the trust fund to revert to or be recoverable by the Employer or be used for, or diverted to, purposes other than for the exclusive benefit of members, annuitants, joint annuitants and bene-

beneficiaries under the Plan, except such funds, if any, as may remain at termination of the trust after satisfaction of all liabilities with respect to members, annuitants, joint annuitants, and beneficiaries under the Plan, and are due to erroneous actuarial calculations.

The Board of Directors reserves the right at any time and for any reason satisfactory to it, to discontinue permanently all contributions by the Employer under this Plan. Such discontinuance shall be deemed to be a complete termination of the Plan.

In the event of the complete termination of the Plan, all funds in the custody of the Corporate Trustee shall be allocated in the following order:

1. An amount equal to the deposits with interest at the rate of two per cent (2%) per annum compounded annually of all members at the date of termination other than annuitants and joint annuitants shall first be set aside.

2. The balance shall be applied in the following order for the purpose of providing (a) retirement income payments to annuitants and joint annuitants; (b) retirement income payments to those members eligible to retire under the Plan at the date of termination; and (c) payments for those members not included in (a) and (b) above.

Any member not included in (a) above may receive the refund of his respective deposits with interest at the rate of two per cent (2%) per annum compounded annually upon application within thirty (30) days after date of termination. Any such member who does not elect to receive such refund within said period shall have the amount of his payments under 2(b) or 2(c) increased by the amount that may be provided by his deposits and interest. (*As amended, effective September 1, 1945.*)

The application of such funds under each of the foregoing classifications shall be in accordance with a nondiscriminatory formula adopted by the Retirement Plan Committee, on the basis of retirement benefits accrued under the provisions of the Plan and the service of all members. When the application of such funds has been calculated on the foregoing basis, the Trust shall be terminated and the respective interests distributed, such distribution to be in the form of cash or annuity contracts as determined by the Retirement Plan Committee, providing that any funds remaining after the satisfaction of all liabilities to members, annuitants, joint annuitants and beneficiaries under the Plan and due to erroneous actuarial calculations may be withdrawn by the Board of Directors from the trust fund for the account of the Employer.

Notwithstanding any other provisions of the Plan to the contrary, the retirement income payments provided for under the Plan for those members and annuitants who are among the twenty-five (25) most highly compensated employees as of September 1, 1945, shall be subject to the following conditions:

- ii, on or before January 1, 1961, contributions hereunder are discontinued by the Employer, or should the Plan be terminated, no monthly retirement income payable under Section 9 shall exceed one-twelfth (1/12) of the sum of (1) the greater of (a) one thousand five hundred dollars (\$1,500), or (b) an amount determined by multiplying the number of years from September 1, 1945, up to such date of discontinuance or termination by one and three-fourths per cent (1 3/4%) of the first fifty thousand dollars (\$50,000) of average annual compensation during the five (5) calendar years immediately preceding such date or immediately preceding the date of commencement of retirement income payments hereunder, if

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earlier, plus (2) one-fifteenth (1/15) of the aggregate deposits under the Plan made by the member or annuitant. In the event of such discontinuance or termination prior to January 1, 1961, no other monthly retirement income payments shall exceed amounts which have the same actuarial values as monthly retirement income payments commencing at age sixty-five (65), based on amounts computed within the limitations of (1) and (2) above. The foregoing limitations shall be in addition to the limitation on the amount of monthly retirement income payments specified in Section 13 (b).

If, at any time prior to January 1, 1961, the contributions under the Plan have been insufficient to meet the cost of the Plan, no retirement income payments provided for any such members or annuitants shall exceed those which would be provided if the Plan were discontinued at that time unless and until any later time when contributions have been sufficient to meet the cost of the Plan. For the purpose of this section, in determining whether the costs of the Plan have been met, there shall be used the plan of funding, the method of actuarial valuation, and the assumptions as to future experience used in determining the amount of deduction claimed under Section 23 (p) of the Internal Revenue Code as amended for the first taxable year, but in any case it shall be considered that the costs have not been met at any time if the contributions up to that time have been less than the sum of the normal costs of the Plan as defined in Section 29.23 (p)—7 of Regulations 111 in effect for the first taxable year, plus interest on the unfunded costs of retirement income payments based on service prior to September 1, 1945 for the period from September 1, 1945, up to that time on the basis of the same assumptions as to future experience. If, at any time prior to January 1, 1961, the Plan is changed so as to reduce the value of retirement income payments to be provided thereafter by employer contributions for any other member, or so as to increase the value of retirement income payments to be provided thereafter by employer contributions for the twenty-five (25) most highly compensated employees, the limitations applicable in the case of a discontinuance or termination of the Plan shall apply, unless the Employer or the Corporate Trustee shall receive a written ruling from the Commissioner of Internal Revenue that, in his opinion, the Plan as so changed continues to meet the requirements of Section 165 (a) of the Internal Revenue Code. *(As amended, January 1, 1951.)*

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FIBREBOARD RETIREMENT PLAN TRUST AGREEMENT

THIS INDENTURE, made as of the 1st day of September, 1945, by and between FIBREBOARD PRODUCTS INC., a Delaware corporation, hereinafter called the "Corporation," and WELLS FARGO BANK & UNION TRUST CO., a California banking corporation, hereinafter called the "Trustee,"

WITNESSETH:

That whereas the Corporation is adopting a Retirement Plan for the benefit of such employees as shall participate therein, a copy of the Plan being hereunto attached and marked Exhibit "A," and the Corporation designates the Trustee as the trustee under such Plan and depository of the funds to be deposited pursuant to such Plan;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, the parties hereto agree as follows:

First. The Corporation shall pay to the Trustee from time to time, the contributions of employees participating in the Plan, and the corporation's contributions under the Plan. All such payments and the accruals thereto from time to time held by the Trustee shall be hereinafter referred to as the "Fund," which Fund shall be held by the Trustee in trust hereunder and shall be invested and applied by it as hereinafter provided.

Second. The Trustee shall hold, invest, reinvest, manage and administer the Fund for the benefit of the members, annuitants, joint annuitants and beneficiaries under and in accordance with the Plan, and no part of the corpus or income of the trust shall, prior to the satisfaction of all liabilities with respect to members, annuitants, joint annuitants and beneficiaries under the Plan, be used for or devoted to purposes other than for the exclusive benefit of such members, annuitants, joint annuitants and beneficiaries under the Plan, except such funds, if any, as may remain at termination of the trust after satisfaction of all liabilities with respect to members, annuitants, joint annuitants and beneficiaries under the Plan and are due to erroneous actuarial calculations.

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Third. The Plan shall be administered by the Retirement Plan Committee. The Trustee shall not itself be responsible in any respect to the administration of the Plan. The sole responsibilities of the Trustee hereunder shall be to hold and to invest and reinvest from time to time the Fund in its possession or under its control as Trustee, in accordance with the powers and subject to the restrictions stated in this indenture or in any modification or amendment hereof, and to pay moneys therefrom to or for the account of the Retirement Plan Committee for the use of the Plan, and if the Retirement Plan Committee shall so direct, to members, to annuitants, to joint annuitants, and to beneficiaries under the Plan, in the amounts and as directed by the Retirement Plan Committee upon orders to the Trustee signed by the Retirement Plan Committee from time to time. The Trustee shall be fully protected in paying out moneys from the Fund from time to time upon such written orders, and shall be charged with no responsibility whatsoever respecting the application of such moneys paid by it upon such written orders.

Fourth. Except to the extent hereinafter provided, and having regard for the cash requirements of the Plan as stated to it from time to time by the Committee, the Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested without distinction between principal and income, in accordance with the laws of the State of California governing investments by trustees; or, to the extent from time to time approved by the Board of Directors of the Corporation, shall use the Fund to purchase annuities; provided, however, that no investment of the assets of the Fund shall at any time be made in the securities of any corporation or other issuer if by reason of such investment the book value of the securities of such corporation or issuer held in the Fund immediately after such investment shall be equal to or exceed ten per cent (10%) of the then book value of the Fund, except that this limitation shall not apply to bonds or other securities of the United States or securities guaranteed as to payment of principal and interest by the United States; and provided further, that, on the written request of the Committee to retain cash to meet contemplated requisitions of the Committee, the Trustee shall retain so much cash as shall be specified in such written request and shall be under no obligation to invest the same as herein provided, and, also, that the Trustee in its discretion may retain cash temporarily awaiting investment.

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From time to time the Trustee may sell any securities of the Fund, and in the event that the Trustee shall purchase any securities which are not sound investments in the judgment of the Board of Directors of the Corporation, the Trustee shall sell any or all of such securities promptly at the written request of said Board of Directors. Failure or refusal by the Trustee to sell securities pursuant to the provisions of this Trust Agreement upon the written request of the Board of Directors of the Corporation shall constitute willful misconduct.

No purchaser upon any sale of securities of the Fund shall be bound to see to the application of the purchase money or to inquire into the validity, expediency or propriety of any such sale.

Fifth. The Trustee may vote upon any stocks, bonds or other securities of any corporation or other issuer at any time held in the Fund or otherwise consent to or request any action on the part of such corporation or other issuer and may give general or specific proxies or powers of attorney with or without power of substitution, and participate in reorganizations, recapitalizations, consolidations, mergers and similar transactions with respect to such securities; and may deposit such stocks or other securities in any voting trust, or with any protective or like committee, or with a trustee, or with depositaries designated thereby, and may exercise any subscription rights and conversion privileges and, generally, may exercise any of the powers of an owner with respect to stocks or other securities or property comprising the Fund.

The Trustee may register any securities held by it hereunder in its own name or in the name of a nominee with or without the addition of words indicating that such securities are held in a fiduciary capacity, and may hold any securities in bearer form, but the books and records of the trust shall at all times show that all such investments are part of the Fund.

Sixth. The Trustee may employ suitable agents and counsel and may pay their reasonable expenses and compensation. The expenses incurred by the Trustee in the performance of its duties hereunder, including fees for legal services rendered to the Trustee, such compensation to the Trustee as may be agreed upon in writing from time to time between the Retirement Plan Committee and the Trustee, and all other proper charges and disbursements of the Trustee, including all real and personal property taxes, income taxes, if any, and other taxes of any and all kinds whatsoever that may be levied or assessed under existing or future laws upon or in respect of the trust hereby created or the Fund or any money, property or securities forming a part thereof, shall be charged to and paid by the Corporation.

Seventh. The Trustee shall not be liable for the making, retention, or sale of any investment or reinvestment made by it as herein provided nor for any loss to or diminishment of the Fund, except due to its own negligence, willful misconduct, or lack of good faith. The Trustee may from time to time consult with counsel, who may be of counsel to the Corporation, and shall be fully protected in acting upon such advice of counsel as respects legal questions.

Eighth. The Trustee shall keep accurate and detailed accounts of all investments, receipts and disbursements and other transactions hereunder, and all accounts, books and records relating thereto shall be open to inspection by any person designated by the Retirement Plan Committee or by the Board of Directors of the Corporation, at all reasonable times.

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Ninth. The Trustee may be removed by the Board of Directors of the Corporation at any time upon ninety (90) days' notice in writing to the Trustee. The Trustee may resign at any time upon ninety (90) days' notice in writing to the Corporation.

Upon removal or resignation of the Trustee, the Board of Directors of the Corporation shall appoint and designate a new trustee with the same powers and duties as those conferred upon the Trustee hereunder, and the Trustee shall assign, transfer and pay over to such successor trustee the funds and properties then constituting the trust hereunder.

In no event shall the Trustee or the successor trustee be other than a bank which is a member of a Federal Reserve Bank or a bank or trust company qualified and doing business in the State of California and subject to the supervision of the Superintendent of Banks or the Controller of Currency. *(As amended, effective September 1, 1945.)*

Tenth. Within ninety (90) days following the close of each calendar year or the removal or resignation of the Trustee, the Trustee shall file with the Corporation and with the Retirement Plan Committee a written report setting forth all investments, receipts and disbursements, and other transactions effected by it during the calendar year or part thereof upon which the report is filed and containing an exact description of all securities purchased and sold, the cost or net proceeds of sale (excluding accrued interest paid or received), and showing the securities and investments held at the end of such period, and the cost of each item thereof as carried on the books of the Trustee. Upon the expiration of ninety (90) days from the date of filing such account, the Trustee shall be forever released and discharged from any liability or accountability to anyone as respects the propriety of its acts or transactions shown in such account, except with respect to any such acts or transactions as to which the Corporation or the Retirement Plan Committee shall within such ninety-day period file with the Trustee a written statement setting forth its exceptions or objections. The Trustee shall also, in the administration of the trust, render monthly statements to the Corporation, and shall from time to time advise the Corporation of any purchases which it may make in the Fund.

Eleventh. Any action by the Board of Directors of the Corporation, pursuant to any of the provisions of this indenture or of the Plan, may be evidenced by a resolution of such Board certified to the Trustee over the signature of the Secretary or Assistant Secretary of the Corporation under its corporate seal, and the Trustee shall be fully protected in acting in accordance with such resolutions so certified to it. All requests, directions, requisitions and instructions of the Retirement Plan Committee to the Trustee shall be in writing, signed by a majority of the members of the Retirement Plan Committee or by a representative of the Retirement Plan Committee authorized to sign such documents by a majority of the members of the Retirement Plan Committee, and the Trustee shall act and shall be fully protected in acting in accordance with such requests, directions, requisitions and instructions. The Corporation shall furnish the Trustee from time to time with certified copies of the resolutions of its Board of Directors evidencing the appointment and termination of office of any members of the Retirement Plan Committee and the appointment of successors thereto.

Twelfth. The Corporation shall have the right at any time, by an instrument in writing, duly executed and acknowledged and delivered to the Trustee, to modify, alter or amend this indenture, in whole or in part, in accordance with the express provisions of the Plan, provided, however, that the duties, powers and liabilities of the Trustee hereunder shall not be substantially increased without its written consent, and provided further

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that no modification, alteration or amendment of this indenture or termination of the trust shall permit any part of the Fund to revert to, or be recoverable by the Corporation, or be used for, or diverted to purposes other than for the exclusive benefit of the members, annuitants, joint annuitants, and beneficiaries under the Plan, except such funds, if any, as may remain at the termination of the trust after satisfaction of all liabilities with respect to members, annuitants, joint annuitants, and beneficiaries under the Plan and are due to erroneous actuarial calculations.

Thirteenth. The Corporation has the right to terminate the Plan, and in the event of such termination, the Board of Directors of the Corporation shall advise the Trustee in writing of such termination, in which event the Fund then held by the Trustee shall be paid to the persons entitled thereto as may then be provided in such Plan, and to effect this purpose the Trustee shall disburse such Fund to such persons and in such amounts and at such times as it may be directed to do by the Board of Directors of the Corporation or the Retirement Plan Committee, and the Trustee shall be entitled to rely upon the instructions and directions of either the Board of Directors of said Corporation or the Retirement Plan Committee, and shall be liable to no one in so doing. The term "persons entitled thereto" shall include the Corporation if, upon termination of the Plan, it shall be determined that the Fund is in excess of the amount required fully to fund the Plan, and that such excess was due to erroneous actuarial calculations, and in such event and notwithstanding the provisions of Article Second hereof, the Board of Directors of the Corporation shall have the right to withdraw any such excess funds from the Trustee for the account of the Corporation upon termination of the Plan.

Fourteenth. The Trustee hereby accepts this trust and agrees to hold all the property constituting the Fund hereunder, subject to all the terms and conditions of this indenture.

Fifteenth. This indenture shall be construed and enforced according to the laws of the State of California, and all provisions hereof shall be administered according to the laws of said State.

Sixteenth. So far as may be lawful, the trust hereby evidenced shall continue until the Plan shall be terminated as therein provided; except that if prohibited from continuing for that period of time by the rule against restraints on alienation, then it shall terminate upon the death of the last survivor of all persons who were employees of the Corporation on the date of execution of this trust agreement. (*As added, effective September 1, 1935.*)

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their officers thereunto duly authorized.

FIBREBOARD PRODUCTS INC.,

Attest:

By.....
President

.....
Secretary

WELLS FARGO BANK & UNION TRUST CO.,

Attest:

By.....

.....
Secretary

[RESPONDENT'S EXHIBIT 1]

AGREEMENT

THIS AGREEMENT, by and between the Emeryville, California, Plant of Fibreboard Paper Products Corporation (Pabco Division), hereinafter referred to as the Plant, party of the first part, and the United Steelworkers of America on behalf of the East Bay Union of Machinists, Local 1304, hereinafter referred to as the Union, party of the second part, executed this twenty-fourth day of September 1958, shall be effective August 1, 1958 to and including July 31, 1959 between the Plant and the Union as follows:

WITNESSETH:

This Agreement shall continue in full force and effect to and including July 31, 1959, and shall be considered renewed from year to year thereafter between the respective parties unless either party hereto shall give written notice to the other of its desire to change, modify, or cancel the same at least sixty (60) days prior to expiration.

Within fifteen (15) days after notice of reopening is given, the opening party shall submit a complete and full list of all proposed modifications. All other sections shall remain in full force and effect. Negotiations shall commence no later than forty-five (45) days prior to the anniversary date of the Agreement unless otherwise mutually changed.

SECTION I. WAGE SCALE

The hourly, straight-time, wage-rate schedule as specified in Appendix A is attached.

The wage formula of the Emeryville, California, Plant of Fibreboard Paper Products Corporation of \$1.00 a day less than the prevailing Building and Construction Crafts' scale shall be applied automatically August 1 of each year. If on August 1 of the concerned year the outside contract used as a basis for applying the wage formula of the Emeryville Plant of Fibreboard Paper Products Corporation is still being negotiated, then the effective date of this Agreement shall prevail when those negotiations are completed.

If the concerned outside contract provides for additional wage changes during its contract year, the additional wage changes shall become effective the same date as specified in that contract.

SECTION II. TRANSFERS

Any employee transferred to a job receiving a higher rate of pay shall receive the higher rate. If an employee, to serve the convenience of the Plant, is temporarily transferred to a job receiving a lower rate of pay, he shall receive his regular rate of pay.

APPENDIX A
TO
AGREEMENT OF AUGUST 1, 1958
BETWEEN
THE EMERYVILLE, CALIFORNIA, PLANT OF
FIBREBOARD PAPER PRODUCTS CORPORATION (PABCO DIVISION)
AND
UNITED STEELWORKERS OF AMERICA
on behalf of the
EAST BAY UNION OF MACHINISTS, LOCAL 1504

Straight-time Hourly Rate
Effective August 1, 1958

Classification

Maintenance Machinist	\$3.525
Fireman	3.525
Engineer	3.64
Storekeeper	3.35
Helper	3.195
Working Foreman - 10% above Maintenance Machinist	3.88

APPRENTICE STANDARDS

It is agreed that working conditions and rules governing apprentices shall conform to the standards in effect throughout the jurisdiction of the East Bay Union of Machinists.

APPRENTICE WAGES

Apprentices shall be paid not less than the following percentages of the journeyman's wages

1st	1000 hours	68%	5th	1000 hours	80%
2nd	1000 hours	71%	6th	1000 hours	83%
3rd	1000 hours	74%	7th	1000 hours	87%
4th	1000 hours	77%	8th	1000 hours	91%

RATIO OF APPRENTICES TO JOURNEYMEN

Every employer who employs one (1) or more journeymen steadily may employ one (1) apprentice and one (1) additional apprentice for every ten (10) additional journeymen steadily employed.

[RESPONDENT'S EXHIBIT 2]

DISTRICT 33
UNITED STEELWORKERS OF AMERICA
AFL-CIO610 Sixteenth Street Rooms 219-220 Pacific Building
Oakland 12, California - Sub-District 3

May 26, 1959.

Fibreboard Paper Products Corporation,
P. O. Box 4317,
Oakland 23, California.Attention: Mr. R. C. Thumann, Director of
Industrial Relations

Gentlemen:

Pursuant to the provisions of the Labor Management Relations Act, 1947, you are hereby notified that the Union desires to modify as of August 1, 1959 the collective bargaining contract dated July 31, 1958, now in effect between the Company and the Union.

The Union offers to meet with the Company at such early time and suitable place as may be mutually convenient, for the purpose of negotiating a new contract.

Very truly yours,

UNITED STEELWORKERS OF AMERICA

By Wm. F. Stumpf, Representative

By Lloyd Ferber, Business Rep.
Local 1304

[RESPONDENT'S EXHIBIT 3(a)]

EAST BAY UNION OF MACHINISTS
LOCAL 1304

United Steelworkers of America, AFL-CIO
3637 San Pablo Avenue
Emeryville 8, California

June 15, 1959

Pabco Division of Fibreboard Products
Foot of 64th Street,
Emeryville, California.

Attn. Mr. Thumann

Gentlemen:

Enclosed find the proposals of Local 1304, and its members working at the Emeryville Plant for the 1959 negotiations.

We stand ready to meet with you regarding the same at your convenience.

Respectfully,

EAST BAY UNION OF MACHINISTS
LOCAL 1304 U.S. of A., AFL-CIO

LLOYD H. FERBER
Business Agent

[RESPONDENT'S EXHIBIT 3(b)]

PABCO PROPOSALS FOR 1959

SECTION I - WAGE SCALES

We would like to arrive at a basis to eliminate the unfair wage discrepancy between the machinist and the other crafts in the plant.

SECTION IV - SENIORITY

Paragraph b - Change ninety (90) days to thirty (30) days.

SECTION V - HOURS OF WORK AND OVERTIME

We request a 35 hour week - schedule of shifts to be worked out.

SECTION XII - HOLIDAYS

1. Add, one additional paid Holiday.
2. Delete worked the day before and the day after, for qualifying.

SECTION XIII - NIGHT DIFFERENTIALS

(a) Change to ten (10) percent, and fifteen (15) percent.

SECTION XV - VACATIONS

We request three weeks vacation after five years of service, and four weeks vacation after fifteen years of service.

SECTION XVII - WELFARE PLAN

The plant to pay full cost of Health and Welfare. The Plant also to extend the coverage to retired employees under the pension plan.

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from the original

SECTION XXI - ADJUSTMENT OF COMPLAINTS

Add new section between (a) and (b) as follows:

Such meeting between an executive of the Plant and a representative of the Machinist Union no later than five working days after referral to the above representatives of the parties. Failure of either party to be available shall constitute concession of the grievance to the other party. The time limit may be extended by mutual agreement.

NEW

We request five cents per hour to be placed into a fund to provide for supplementary unemployment benefits for employees laid off in a reduction in force. To provide at least sixty-five percent of the employee's normal weekly wage, including unemployment benefits.

Qualifications to be those of the State Department of Employment.

[RESPONDENT'S EXHIBIT 6]

FIBREBOARD

RETIREMENT PLAN

**FIBREBOARD CORPORATION
AND SUBSIDIARY COMPANIES**

GROUP B

* * *

5**WHEN DOES MY RETIREMENT INCOME BEGIN?**

Normal retirement date is the first day of the month following your 65th birthday, and your retirement income begins with the month you retire. (Section 17)

After you reach age 55 and have had 20 or more years of employment, you may retire at any time you wish. This is "optional earlier retirement." (Section 20)

Under earlier retirement you have several choices of when you want retirement income to begin: you may have it begin when you retire; you may put off taking it until you are 65; or you may choose to take it at any time between the date you retire and age 65.

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from the original

If you become totally and permanently disabled, and have had 15 or more years of employment when disability begins, you are entitled to retirement income. A doctor's certificate is required to establish that the disability is both total and permanent. (Section 21)

If you leave the Company after age 50 and have had 20 or more years of employment, you may leave your deposits in the Plan, and at age 65 you will receive retirement income in the amount accrued to your credit at the date you terminated. (Section 15)

Proof of age is necessary before retirement income can be paid. (Section 23)

Proof of date of birth should be given to the Retirement Plan Committee as soon as possible after you join the Plan, because it can be harder to get proof as time goes by. Proof will also be required by the Social Security Board when you apply for Social Security, and you may also need proof for other purposes.

Consult with your Personnel Department or the Retirement Plan Committee as to what is acceptable proof.

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WHERE DOES THE MONEY FOR THE PLAN COME FROM?

The cost of providing the benefits under the Plan is met by your deposits and Company contributions. (Section 9)

Each year you deposit into the Plan by payroll deduction 2% of the first \$3,000 you earn and 4% of any amount over that. (Section 8)

The Company contributes the greater share of the cost.

Your deposits and the Company contributions are paid to the Trustee, and the Trustee holds and invests these funds for your benefit. The Wells Fargo Bank of San Francisco is the Trustee. (Section 26 and Trust Agreement Page 42)

Your deposits in the Plan earn interest at the rate of 2% a year, compounded annually, and this interest is credited to your individual account. (Section 8)

You can't lose. If you terminate your employment and are not eligible for any continued benefits under the Plan, or if you withdraw from the Plan, your deposits, plus interest, are refunded to you. (Section 8)

If you should die while a member of the Plan and prior to retirement, all of your deposits, plus interest, would be refunded to your named beneficiary. (Section 8)

On death after retirement, any excess of your deposits and interest over retirement income received would be refunded to your beneficiary, unless you had named a joint annuitant. (Sections 8, 22)

You may name anyone you wish as your beneficiary, and you may change your beneficiary at any time.

The Company cannot withdraw any funds from the Trust Fund.

The Plan has been approved by the United States Treasury Depart-

ment. An actuarial firm determines the amounts needed to keep the Plan financially sound. The accounts of the Plan are examined each year by a firm of independent auditors. All of the expenses of administering the Plan are paid by the Company and not charged to the Trust Fund. (Section 25)

* * *

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(b) Such employees who have not completed five (5) years of service on or before September 1, 1945, and employees whose employment begins after September 1, 1945, shall become eligible to commence participation in the Plan on the first day of the payroll period next following their completion of five (5) years of service.

(c) An employee who on June 30, 1957, was a participant in, or would have been eligible to participate in, the Prior Group Plan, shall become eligible to commence participation in this Plan on June 30, 1957, subject to the condition (in the case of a Prior Group Plan participant only) that he shall have filed with the Retirement Plan Committee his written consent to Rider No. 9 of said Prior Group Plan on or prior to June 30, 1957, or within such period thereafter as the Retirement Plan Committee shall determine; and if he fails to do so he shall for all purposes under this Plan be treated as a new employee commencing his service on June 30, 1957.

(d) Employees of the Pabco Divisions of the Employer, who are not on the monthly or semi-monthly payroll, shall not be eligible to participate in the Plan, except as follows:

(1) Employees who are members of the collective bargaining units represented by the unions hereinafter listed shall, if otherwise eligible, be eligible to commence participation as of the applicable date of eligibility listed below (herein called "unit eligibility date"), or on the first day of the payroll period next following their completion of five (5) years of service, if later. Such unions and unit eligibility dates are:

January 1, 1958

East Bay Union of Machinists, Lodge 1301, United Steelworkers of America, AFL-CIO

United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the U. S. and Canada, Local Union 342, AFL-CIO

International Association of Bridge, Structural, Ornamental, Reinforced Iron Workers, Riggers, Stone Derrickmen, Machinery, House Movers and Sheetmetal Workers, Local Union No. 378, AFL-CIO

United Brotherhood of Carpenters & Joiners of America, Local Union 36, AFL-CIO

International Brotherhood of Electrical Workers, Local No. 595, AFL-CIO

Paint Makers' Union, Local No. 1101 of Alameda and Contra Costa Counties, Brotherhood of Painters, Decorators and Paperhangers of America, AFL-CIO

International Brotherhood of Pulp, Sulphite and Paper Mill Workers, Bayshore Local No. 255, AFL-CIO

Oil, Chemical and Atomic Workers International Union, Representing Local No. 1-326 of Rodeo, AFL-CIO

Sheet Metal Production Workers' International Association, Local Union No. 355 of Northern California, AFL-CIO

Marble Masons, Local Union No. 25 of California, AFL-CIO

February 1, 1958

International Brotherhood of Pulp, Sulphite and Paper Mill Workers, Los Angeles Local No. 303, AFL-CIO

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November 1, 1961

United Cement, Lime and Gypsum Workers International Union,
Florence, Colorado, Local Union No. 336, AFL-CIO

September 1, 1963

International Brotherhood of Pulp, Sulphite and Paper Mill
Workers, Newark, Gypsum Board Local No. 846, AFL-CIO

(2) If a member is transferred to employment at a Pabco Division and is not eligible under the provisions of this Subsection 6(d), then (provided that Section 7A does not apply to him) his benefits accrued to the date of such ineligibility shall not be affected thereby, but he shall make no further deposits nor accrue any further benefits during the period of such ineligibility.

(e) Officers or directors or members of the Executive Committee of the Employer who are also employees shall be eligible to participate in the Plan on the same basis as other employees.

(f) Notwithstanding any other provision hereof, the members of this Plan shall initially be those employees who, as members as at June 1, 1963, of the collective bargaining units referred to in Section 6 (d) (1) hereof, and the other collective bargaining units referred to in Section 6 (g) of the Fibreboard Retirement Plan—Group C, were transferred to and covered under this Plan pursuant to Section 6 (g) of the Fibreboard Retirement Plan—Group C. Thereafter, employees who become members of such collective bargaining units, and by reason thereof are ineligible to participate in the Fibreboard Retirement Plan—Group A or Fibre-

* * *

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(c) Notwithstanding anything herein to the contrary, upon the death of a person who is a annuitant under both this Plan and the Fibreboard Retirement Plan—Group A and/or Fibreboard Retirement Plan—Group C, the annuitant's named beneficiary shall be entitled in any event to receive a death benefit under this Plan only if the annuitant participated in this Plan at the time of his retirement.

15. Vesting Period.

No portion of the retirement benefits provided under the Plan shall vest in any member prior to his normal retirement date, except as provided in this section and in Sections 20 and 21.

(a) A "terminated vested member" is a member whose employment with the Employer is terminated after December 31, 1957, who does not qualify for retirement under Sections 17, 20 or 21, who has completed twenty (20) years of service and attained the age of fifty (50) years, and who elects, on a form prescribed by the Retirement Plan Committee, to have the provisions of this Section 15 apply to him. No member can qualify as a terminated vested member if his accrued benefits at the time of termination of employment are less than five dollars (\$5) per month.

(b) A terminated vested member shall be entitled to receive an annual retirement income, payable in equal monthly installments, consisting of the annual past-service benefits, annual current-service benefits, the annual adjusted-service benefits and the annual Prior Group Plan benefits accrued by him to the date of his termination of employment with the Employer. The first payment of such monthly retirement income shall be made as of the last day of the calendar month succeeding the month in which the terminated vested member reaches the age of sixty-five (65); provided, however, that no payment will be made unless written request therefor is received from the terminated vested member by the Retirement Plan Committee not more than sixty (60) days before the terminated vested member reaches the age of sixty-five (65), and no payment will be made for any month prior to the month in which such notice is received.

(c) A terminated vested member shall not be entitled to minimum benefits provided for in Section 13, to the death benefit provided for in Section 14, nor to elect any of the optional forms of retirement income provided in Section 22.

(d) A terminated vested member may have his deposits refunded to him at any time prior to reaching age sixty-five (65) by giving written notice thereof to the Retirement Plan Committee, but he shall thereby forfeit all benefits under the Plan. In the event of the refund of deposits to a terminated vested member, interest shall be payable only to the date of his termination of employment with the Employer.

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16. Equivalent Payments.

In the event that the retirement income payable shall be less than five dollars (\$5) per month, the actuarial equivalent of such retirement income shall be paid in a lump sum.

In the event that the retirement income payable to an annuitant is five dollars (\$5) per month or more, but less than ten dollars (\$10) per month, the Retirement Plan Committee shall have the right at its discretion, if the annuitant makes a request therefor within the time stated below, to pay in a lump sum the actuarial equivalent of his retirement income calculated as of the time such lump sum payment is made. As to annuitants whose first income payment becomes payable after January 1, 1951, such request must be made prior to the date on which such first income payment becomes payable. As to annuitants who, as of January 1, 1951, are receiving such retirement income payments, such request must be made prior to March 1, 1951.

17. Normal Retirement Date.

Each member shall be retired on his normal retirement date, unless his retirement has been deferred in accordance with Section 18, or unless he has retired earlier in accordance with Sections 20 or 21. The normal retirement date of both men and women who are members on September 1, 1945, or who become members thereafter, shall be as follows:

(a) For members who have not yet attained age sixty (60) at September 1, 1945, the normal retirement date shall be the first day of the calendar month next following the attainment of age sixty-five (65).

(b) For participants who have attained age sixty (60) but have not yet attained age sixty-five (65) at September 1, 1945, the normal retirement date shall be the first day of any calendar month elected by the participant following the attainment of age sixty-five (65), but not later than the first day of the calendar month next following the attainment of the fifth birthday subsequent to September 1, 1945.

(c) For participants who have attained age sixty-five (65) but have not yet attained age seventy (70) at September 1, 1945, the normal retirement date shall be the first day of any calendar month elected by the participant, but not later than the first day of the calendar month next following the attainment of age seventy (70).

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(d) For members who have attained age seventy (70) at September 1, 1945, the normal retirement date shall be September 1, 1945.

(e) For a member eligible to participate in the Plan under Section 6 (d) the normal retirement date shall be determined under the foregoing subsections of this Section 17, substituting for "September 1, 1945" his unit eligibility date provided for in Section 6 (d).

18. Deferred Retirement.

Upon request of the Board of Directors and with the consent of the member, a member may remain in active employment after his normal retirement date for a period terminating at the end of any calendar month and not to exceed twelve (12) months, and for such additional period, or

periods, terminating at the end of any calendar month, as the Board of Directors may determine, no one of which periods shall exceed twelve (12) months.

In cases where a member's retirement is so deferred, his deposits under the Plan shall cease at the commencement of the payroll period next following his normal retirement date, and thereafter he shall not accrue any current-service benefits. The first payment of his monthly retirement income shall be made as of the last day of the calendar month next following that in which his active service shall terminate. His monthly retirement income under the Plan shall be actuarially increased, taking into account, among other things, the payments which he did not receive by reason of such deferment, and his increased age.

19. Reemployment After Retirement.

In the event that the Employer shall reemploy an annuitant who has not yet attained his normal retirement date at the time of reemployment, his retirement income payments shall cease at the end of the month in which he is reemployed. Such reemployed annuitant may, at any time during reemployment but prior to attainment of his normal retirement date, resume participation in the Plan by filling out and signing a new enrollment form in the same manner provided in Section 7 (a) hereof, in which case during the period of such reemployment prior to his normal retirement date deposits shall again be made by such reemployed annuitant and further current-service benefits shall accrue to his credit under the Plan. When such reemployed annuitant again retires (whether before or after his normal retirement date), he shall again receive retirement income payments, under the same form of annuity as was in effect prior to his reemployment, recalculated to take into account additional current-service benefits, if any, accrued after reemployment, the amount of retire-

[RESPONDENT'S EXHIBIT 7]

WAGE RATES PAYABLE TO MAINTENANCE MACHINISTS DURING THE
BACKPAY PERIOD BY OTHER EMPLOYERS UNDER CONTRACT WITH THE
EAST BAY UNION OF MACHINISTS

	<u>1961</u>	<u>1962</u>	<u>1963</u>	<u>1964</u>	<u>1965</u>
Foremost Feed and Chemical Company	8/1 \$3.47	8/1 \$3.57	8/1 \$3.72	8/1 \$3.87	8/1 \$4.00
Encinal Terminals	8/1 3.415	8/1 3.525	8/1 3.675	8/1 3.825	8/1 4.00
Darkee	8/1 3.525	8/1 3.605	8/1 3.695	6/1 3.83	8/1 3.95
Conseco	6/19 3.23	6/4 3.32	6/1 3.48	6/1 3.64	6/1 3.77
Shedd-Bartush			5/1 3.50	8/1 3.635	8/1 3.755
Allied Engineering and Production Corporation	8/1 3.24	8/1 3.33	8/1 3.49	8/1 3.62	8/1 3.75
Mansfield Tire and Rubber Company	8/1 3.36	8/1 3.45	8/1 3.55	8/1 3.62	Plant Closed
East Bay Machine Shops - Bay City Iron Works Kramer's Machine Shop Union Machine Works	6/19 3.23	6/4 3.32	6/1 3.48	6/1 3.61	6/1 3.74
Union Diesel Engine Co.	7/3 3.23	6/4 3.32	6/1 3.48	6/1 3.61	6/1 3.74
Grove Valve and Regulator Co.	7/1 3.23	10/1 3.35	6/1 3.48	6/1 3.61	6/8 3.74
S. T. Johnson Co.	6/19 3.23	6/4 3.32	6/1 3.48	6/1 3.61	6/8 3.74
American Manganese Steel Division	7/3 3.24	6/4 3.33	6/1 3.47	6/1 3.60	6/1 3.73
Pacific Coast Engineering Co.	6/19 3.23	6/4 3.32	6/1 3.48	6/1 3.60	6/1 3.74
Speedmaster Engineering Company	3.33	3.42	3.51	No rate for Maintenance Machinists	
Alameda Shipbuilding and Repair Group	7/1 3.00	<u>7/1 3.10</u>	7/1 3.20	7/1 3.30	7/1 3.40

[RESPONDENT'S EXHIBIT 10(a)]

AGREEMENT

THIS AGREEMENT, by and between the Building Materials, Industrial Insulation and Paint Plants of Fibreboard Paper Products Corporation located in Emeryville, California, hereinafter referred to as the Plants, party of the first part, and the United Steelworkers of America on behalf of the East Bay Union of Machinists, Local 1304, hereinafter referred to as the Union, party of the second part, executed this 7th day of July, 1965, shall be effective July 15, 1965, to and including April 1, 1968, between the Plants and the Union as follows:

WITNESSETH:

SECTION I. WAGE SCALE

The hourly, straight-time, wage-rate schedule is specified in the attached Appendix A.

SECTION II. UNION SHOP

(a) The Plants recognize the Union as the sole collective bargaining agency for those Employees of the Plants who are listed by occupation under Appendix A of this Agreement.

(b) All employees who are members of the Union on the effective date of this Agreement shall, as a condition of employment, remain members of the Union.

(c) All employees who are not members of the Union on the effective date of this Agreement shall, as a condition of employment, become members thirty (30) days following the effective date of this Agreement.

(d) All new employees hired on or after the effective date of this Agreement shall, as a condition of employment become members thirty (30) days following his date of employment.

(e) The provisions of this Agreement shall be applied to all employees covered by this Agreement without discrimination on account of race, color, creed, national origin, religion or political affiliation.

(f) The Plants shall inform new employees that the Union is the exclusive bargaining agent for all employees in the bargaining unit, and shall introduce the new employee to the Shop Steward.

(g) The Plants shall furnish to the head Shop Steward the name and classification of all new hires and terminations.

(h) The Union and other sources shall be notified when new employees are needed.

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SECTION III. SENIORITY

(a) Seniority shall not apply to any employee until he has been employed for a probationary period of no less than ninety (90) consecutive working days. During this probationary period the Plants may discharge the employee at its own option.

(b) Once seniority is established, it shall start from the date of first hire of the most recent probationary period. Seniority, for the purposes of this Section, shall apply to the length of service in each of the classifications listed in the attached Appendix A.

(c) When a layoff occurs, the least senior employee in the concerned classification shall be laid off first. In recall the employee on layoff with the greatest seniority in the concerned classification shall be the first to be recalled providing he has the fitness and ability to do the job required.

(d) Twelve (12) consecutive months of unemployment, a voluntary quit, or a discharge breaks seniority.

(e) If an employee is notified after a layoff to report for work and does not report within five (5) days or give a satisfactory explanation for not reporting, he shall be considered as having voluntarily quit.

(f) The Chief Steward shall have top seniority as to layoffs and recalls in his classification provided he has necessary skills and ability.

SECTION IV. SCOPE OF WORK

The Plants shall assign work to the employees listed in the classification of Appendix A having to do with mechanical maintenance - repair or renovation.

The word "repair" used within the terms of this Agreement and in accordance with maintenance, is work required to restore by replacement or reconditioning parts of existing facilities to efficient operating conditions.

The word "renovation", used within the terms of this Agreement and in connection with maintenance, is work required to restore by replacement or revamp of parts through the use of machine tools of existing facilities to efficient operating condition.

It is recognized that (1) the millwrights of the production unit employed in the Felt Mill and production employees in the Paint Plant may be assigned to perform certain repair work and (2) hourly production employees may be assigned to perform certain light or running maintenance work which may include oiling, machine adjustments necessary to correct production deficiencies and for production changes, emergency repairs for production continuity or to protect facilities and to assist employees in the Machinist A and/or B classifications of this Agreement. This recognition does not preclude the Plants from assigning to the employees covered by this

Agreement maintenance work in the Felt Mill and Paint Plant and from performing upon assignment some of the light or running maintenance work as listed in (2) above.

SECTION V. HOURS OF WORK AND OVERTIME

(a) Forty (40) straight-time work hours shall constitute a work week made up of eight (8) straight-time work hours a day, five (5) days a week, Monday to Saturday inclusive, between 7:00 a.m. and 4:30 p.m., however necessary start up work may be scheduled earlier. All other time worked exclusive of shift work or four cycle shift system is to be paid at the rate of two times the straight-time hourly rate. An employee shall not be required to take time off during his regularly scheduled work week which is Monday to Friday inclusive, Tuesday to Saturday inclusive, or four cycle shift system.

(b) For Power House employees a four cycle shift system for seven day operation is attached as Appendix B.

(c) Day shift (Monday to Friday inclusive) between the hours of 7:00 a.m. and 4:30 p.m., however necessary start up work may be scheduled earlier. Swing shift when scheduled starts at completion of Day shift. Night shift when scheduled starts at completion of Swing shift. Other hours may be established if required by production requirements.

(d) All work required to be performed before the starting time of a posted schedule or necessary start up work shall be at the rate of two times the straight-time hourly rate. Work required to be performed on Saturday or Sunday, other than posted schedule shift work or four cycle shift system, and all work required to be performed on Sunday by Power House Engineers shall be paid at the rate of two times the straight-time hourly rate. All work required to be performed over eight (8) straight-time hours a day or forty (40) straight-time hours a calendar week shall be at the rate of two times the straight-time rate.

Only one basis shall be used to figure overtime which shall not be accumulated or pyramided.

(e) The Plants shall provide a one-half ($1/2$) hour unpaid meal period between four (4) and five and one-half ($5-1/2$) hours after the employee's scheduled starting time. In addition an employee may take a ten (10) minute relief or smoke break during each four (4) hour work period. If an employee should be called back to work during his assigned unpaid lunch period he shall be paid at the rate of two times his straight-time hourly rate during the balance of such lunch period used for working purposes.

(f) Except in a case of emergency, an employee who works more than sixteen (16) consecutive hours should not return to work for at least an eight (8) hour period.

(g) It is not the intention of the Plants to have a Machinist A or B work alone in a Plant except on a four cycle shift.

(h) All overtime work will be distributed as equally as possible among the employees in each classification.

SECTION VI. MINIMUM PAY

An employee scheduled to work and reports for work and none is available shall be paid two hours reporting time unless he was notified not to report prior to the completion of his previous work day. An employee who starts work shall be employed for a minimum of four hours; if he works over four hours, he shall be employed for a minimum of eight hours. The reporting pay or minimum hours do not apply if the employee quits or is discharged, or work is stopped due to fire, earthquake, breakdown of equipment, or other matters not controlled by the Plants.

SECTION VII. CALL-IN PAY

After the termination of an employee's regular shift, if he is called back to work, he shall receive no less than two (2) hours' pay at the overtime rate.

SECTION VIII. HOLIDAYS

(a) The following days shall be recognized as holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the day after Thanksgiving Day, Christmas Day, and at the option of the Plants, each year, one of the following (i.e. Admission Day, Veterans' Day, and the employee's birthday).

(b) The shutdown period for Christmas Day shall be from the end of the Day Shift required work December 24, to the start of the Day Shift, December 26.

(c) The shutdown period for New Year's Day shall be from the end of the Day Shift required work December 31, to the start of the Day Shift, January 2.

(d) Each employee shall receive eight (8) times his regular hourly (Day Shift) rate of pay for the above holidays, provided:

1. The employee has been in the employ of the Plants for thirty (30) calendar days preceding the day on which the holiday is observed.
2. The employee worked the regularly scheduled work day of the Plants prior to and the regularly scheduled work day of the Plants following the holiday. If the employee worked some time during the regularly scheduled work week in which the holiday occurred, he shall receive pay, notwithstanding absence on the work day prior to or the work day following, when such absence was due to:
 - a. Industrial accident
 - b. Bona fide illness covered by a doctor's certificate
 - c. Absence approved by the Plants.

(e) If a holiday set forth above falls on a Saturday, management may, at its option, declare the immediately preceding Friday as the holiday, however, at least

three (3) working days notice shall be given. If a holiday set forth above in (a) falls on a Sunday, it shall be observed on the following Monday.

(f) When a holiday falls within a vacation period, it shall be paid for in addition to the vacation pay.

(g) All work required to be performed on the holidays set forth above in (a) shall be at the rate of two times the straight-time hourly rate in addition to regular holiday pay as set forth above in (d).

SECTION IX. NIGHT DIFFERENTIALS

(a) Differentials shall constitute a ten-cent (10¢) hourly increase on the Swing Shift and a fifteen-cent (15¢) hourly increase on the Night Shift.

SECTION X. DISCHARGE

The Plants shall have the right to discharge any employee for cause, failure to perform assigned work in a competent or productive manner or to recognize job responsibility, or violates posted house and/or safety rules. Employee has right to appeal through grievance procedure.

SECTION XI. VACATIONS

Vacations with pay shall be granted employees covered by this Agreement on the following basis.

(a) Employees having completed one (1) year's service at any date during the calendar year shall be granted forty (40) hours' paid vacation at straight-time rates after that date.

Employees having completed two (2) years' service at any date during the calendar year shall be granted eighty (80) hours' paid vacation at straight-time rates after that date.

Employees having completed seven (7) years' service (effective January 1, 1966, five (5) years' service) at any date during the calendar year shall be granted one hundred twenty (120) hours' paid vacation at straight-time rates after that date, provided however the Plant may require that no more than two (2) weeks of such three (3) week vacation may be taken at any one time.

Employees having completed twenty (20) years' service at any date during the calendar year shall be granted one hundred sixty (160) hours' paid vacation at straight-time rates after that date, provided however the Plant may require that no more than two (2) weeks of such four (4) week vacation may be taken at any one time.

(b) Service as referred to above shall mean continuous employment. An employee must complete six (6) months' continuous service without layoff before he becomes eligible for a vacation at the end of one (1) year.

When an employee is granted a leave of absence or laid off due to lack of work (layoff to be not more than six (6) months), such absence or layoff shall not break continuity of employment. Leave of absence or layoff is to be counted as service time.

(c) Choice of vacation time shall be mutually agreed to by the individual and the department head.

(d) The rate of pay for a paid vacation shall be the regular personnel-card rate the employee is receiving at the time his vacation is taken.

(e) An employee on the hourly payroll may receive his vacation pay upon leaving, and shall receive his regular earnings on the payday following his return.

(f) An employee who has not qualified for a vacation shall receive a pro-rata vacation of 1/12 for each one hundred eighteen (118) straight-time hours worked. Time off for vacation pursuant to this pro-rata formula shall be allowed only in full week units. If the time-off is less than five (5) full days vacation, then the employee shall be paid in cash, but the employee shall not be entitled to vacation time off. Fractions over five (5) full day units shall similarly be paid in cash. An employee who is entitled to be paid for a fraction of a five (5) full day unit, may upon mutual agreement have time off without pay for the period necessary to complete a five (5) full day unit.

SECTION XII. WELFARE PLAN

(a) Sick Benefit Allowance. Every employee covered by this Agreement who is not entitled to benefits of the Salary Plan (paragraph (c) of this section) and who has been continuously employed by the Plant for a period of at least one (1) year shall thereafter be entitled to five (5) days (forty (40) straight-time hours) sick leave with pay a year. A doctor's certificate or other reasonable proof of illness may be required by the Plant. Such sick leave when not hospitalized with pay shall be applicable only in cases of bona fide illness or accident and shall be paid in the following manner:

1. First work day's absence - no pay
2. Succeeding work days' absences - full pay until sick benefit allowance is used up.

For the purpose of this paragraph, full pay shall mean pay for the regular daily schedule of working hours, for those days which the employee would have worked had the disability not occurred, calculated at straight time such amount. The waiting periods herein provided before full pay commences shall apply for each illness or accident when not hospitalized in case the sick benefit allowance has not been used up in previous illnesses during the same year. When hospitalized, full sick leave pay commences with first day of confinement in the hospital.

Sick benefits are not cumulative from year to year nor convertible to cash bonus, provided that an employee with three (3) or more years of seniority with

the Plant may accumulate unused sick leave for three (3) years, provided the maximum sick leave in any year (including sick leave accumulated from prior years) shall not exceed twenty (20) days. Accumulation of sick leave stops when an employee is admitted to the Salary Plan (paragraph (c) of this section).

In industrial injury cases, Workmen's Compensation and sick benefit allowance shall be paid separately, but in the event Workmen's Compensation payments cover all or part of the period during which sick benefit allowances are paid, the sum of the two shall not exceed the sick benefit payable for said period.

(b) Hospital-Medical Care for Employees and their Dependents. There shall be two (2) distinct plans for hospital-medical care for employees and their dependents between which employees may choose. One plan (Plan A) shall be a Permanent Health Plan, and the other (Plan B) shall be a free-choice plan under which the employee shall be able to select his own physician or surgeon and his own hospital.

The premiums for Plans A and B shall be paid for by the employee and the Plant. The Plant, upon proper authorization from the employee, shall deduct the single-subscriber rate of Plan A once a month from the employee's pay.

Any employee employed thirty (30) continuous calendar days by the twentieth day of any month shall be eligible for and be covered by the hospital-medical program beginning with the first day of the following month. Such coverage shall continue throughout the term of the Agreement until the first day of the calendar month following termination or layoff. However, if an employee has three (3) or more years' seniority at the time of layoff, he shall be granted one (1) additional month of hospital-medical care coverage under the plan which is in effect as to him at the time of layoff.

Duplicate coverage shall be avoided both on Plan A and Plan B, and the Plant may make suitable arrangements with the carriers on both Plan A and Plan B for the avoidance of such duplicate coverage.

Each employee eligible for coverage under this Agreement shall make his election as to whether he desires Plan A or Plan B. He shall have a like choice on September 1 of each year, any change to be effective October 1 of the concerned year.

(c) Salary Plan. The Plant and the Union mutually agree that a stabilized working force is an important factor in the continued success of an enterprise and its employees. To this end the Plant shall place certain of its present hourly workers on the weekly payroll. It is also mutually agreed that should this plan prove unsatisfactory to the Union or to the Plant, it may be withdrawn at the end of the Agreement year by either party. The Salary Plan is as follows:

1. Employees covered by this Agreement who have completed five (5) years of consecutive service with the Plant shall be transferred from the hourly payroll

to the weekly payroll and shall be paid according to the scheduled list in the attached Appendix.

2. The annual base salary for each classification shall be determined by multiplying the hourly rate for the classification by two thousand eighty (2080) hours, forty (40) hours a week, times fifty-two (52) weeks. One fifty-second (1/52) of this total shall be paid each eligible employee each pay period.

3. Employees in this group shall receive overtime payments and any additional pay for work performed in higher classifications than their regular rates.

4. Employees on a salary basis are entitled to sick leave and holidays without deductions from their base pay. In case of permanent or semi-permanent illness or when continuous sick leave of more than ninety (90) days is involved, the Plant shall review and make such adjustments in each individual case as is in conformity with its general policies covering sick leave for those of its employees on permanent monthly payroll.

5. Salaried employees covered by this Agreement shall be given two (2) weeks' notice before layoff, and there shall be no layoff from the salaried group until all hourly wage earners covered by this Agreement have been previously terminated.

6. Employees absent from work due to illness must present satisfactory evidence from a qualified physician concerning this illness. This physician may be the employee's own doctor or the Plant's Medical Department. It shall be the mutual responsibility of the Plant and the Union to see that such evidence is forthcoming.

7. Inasmuch as the success of this undertaking is dependent upon the integrity of the individual employee, it is mutually agreed between the Plant and the Union that unexcused absences in this group shall not be tolerated. There shall be a deduction from the base salary for all unauthorized absences. The amount of the deduction shall be the hourly rate of pay times the number of hours of absence. Continued unauthorized absences by any employee may result in discharge.

8. Should it become necessary for the Plant to operate any of the departments covered by this Agreement at less than forty (40) hours a week for a protracted period it is mutually understood that the Union and the Plant shall meet and revise the Salary Plan in keeping with conditions at that time.

9. In industrial injury cases, Workmen's Compensation and sick benefit allowance shall be paid separately, but in the event Workmen's Compensation payments cover all or part of the period during which sick benefits are paid, the sum of the two shall not exceed the sick benefits payable for said period.

(d) Unemployment Compensation Disability. Unemployment Compensation Disability benefits paid to employees of the Plant as required by law shall be used as part of the base pay when such base pay is paid in whole or in part by the Plant in accordance with the other provisions of this section of this Agreement.

SECTION XIII.

During the seven (7) day waiting period before he is entitled to Workmen's Compensation, an employee injured on the job shall receive not less than the Workmen's Compensation or its pro rata.

SECTION XIV. UNION BUSINESS

The business agent or other authorized representatives of the local Union shall be allowed to talk with employees on the job on matters relative to the interest of the parties to this Agreement, when accompanied by a representative of the Plants. This privilege shall be exercised so that no time is lost to the Plants unnecessarily, and shall be contingent upon first receiving the permission of management in each and every instance. Meetings shall be arranged at a place satisfactory to both parties.

Any employee who now holds office or who shall hereafter be elected or officially appointed to office in the Union, which office requires his absence from the Plants; shall be granted a leave of absence therefor without loss of seniority, entitling him to retirement from such office to reinstatement consistent with his seniority; provided however that such leave of absence shall not extend beyond the term of this Agreement unless extended by mutual consent.

SECTION XV. ADJUSTMENT OF COMPLAINTS

(a) Should grievances arise between a Plant and its employees regarding the meaning, interpretation, application or compliance with the terms of this Agreement, there shall be no suspension or interruption of work on account of such grievance.

(b) Such grievances shall be processed as follows:

It is agreed that an employee covered by this Agreement must present his grievance within four (4) working days of the incident causing the grievance except in a case of discharge when the grievance must be presented within two (2) working days and start at paragraph (3) below. If such grievance is not presented within the time limits, it shall be deemed waived and abandoned.

1. A grievance shall first be discussed between the employee and his supervisor. The employee may have a member of the Union committee present at this meeting if he so desires.

2. If not settled within twenty-four (24) hours, a Union committee of two (2) may within forty-eight (48) hours discuss the matter with the Plant Engineer. The Union committee may have the concerned employee present at this meeting if they desire. If the grievance concerns more than one employee, not more than two (2) of the concerned employees may attend the meeting.

3. If not settled within twenty-four (24) hours, the Business Representative

of the Union may within forty-eight (48) hours discuss the matter with the concerned Plant Manager.

4. If not settled within twenty-four (24) hours, the Union may within forty-eight (48) hours refer the grievance in writing on a grievance form provided by the Plants to the office of the Director of Industrial Relations.

5. If not settled within ten (10) days - five (5) days in case of a discharge - the Union may inform the Director of Industrial Relations by registered or certified mail of its intention to go to arbitration as provided in paragraph (6) below. Unless such notice of arbitration is given within the ten (10) days or the five (5) days, as the case may be, the grievance shall be considered closed.

6. When a matter has been referred to arbitration, the Plants and the Union shall select one impartial person mutually agreed upon by the Union and the Plants. If an agreement cannot be reached as to the choice of such arbitrator, then the Union and the Plants shall notify and request the Federal Conciliation Service to submit a list of five (5) impartial arbitrators. The Plants and the Union shall alternately strike one (1) name, until four (4) names have been stricken. The remaining name shall be that of the arbitrator. Whether the Plants or the Union makes the first deletion from said list of five (5) names shall be determined by lot in the case of each arbitration. The authority of the arbitrator shall be limited to construing and interpreting the rights of the Plants and the Union under the terms of the current Agreement. The arbitrator shall not have the power to amend the Agreement or add to its terms in any way. The expense of the arbitrator shall be borne equally by the Union and the Plants. A decision by arbitration as above provided shall be final and binding on both parties.

Time limitations in the foregoing grievance procedure shall not include Saturdays, Sundays or holidays, and such time limitations may be extended by mutual consent. Unless so extended, a grievance not submitted according to the time limitations set forth above shall be considered closed.

SECTION XVI. STOPPAGE OF WORK

It is agreed there shall be no strike, walkout, refusal to report for work, or other interruption of work by the Union, or any employee during the period of this Agreement. Any action of the employees leaving jobs for their own protection in cases of a legally declared strike by some other union directly working on the job, if such strike is sanctioned and approved by the labor body or council having jurisdiction, shall not constitute a violation of this Agreement. It is agreed there shall be no lockout by the Plants during the period of this Agreement.

In the event that in violation of the provisions of the preceding paragraph a strike, walkout, refusal to report for work, or other interruption of work shall occur in the Plants, the Union shall not be subject to financial liability for such violation provided that the Union immediately after the beginning of such violation shall have (1) publicly declared such action a violation of this Agreement, and (2) in utmost good faith used its best efforts to terminate such violation; it being further

agreed that any employee participating in such violation shall in the discretion of the Plants be subject to immediate discharge or other disciplinary action.

SECTION XVII. JURY DUTY

An employee - after thirty (30) calendar days - who loses time from a scheduled shift because of jury duty as certified by the Clerk of the Court shall be paid for the period of such absence at his regular straight-time rate, subject to the following conditions:

1. The employee shall be paid as above only for the time actually lost, i.e. when he normally would have been working at straight-time rate of pay.
2. The employee must work during his scheduled shift before or after his required jury duty absence as much as is practicable.

SECTION XVIII. FUNERAL LEAVE

An employee upon request shall be excused from scheduled work with pay for a period not to exceed three (3) consecutive calendar days when death occurs in his immediate family - employee's mother, father, brother, sister, spouse, children, or foster equivalent - subject to the following conditions:

1. Pay for a scheduled work day shall not exceed eight (8) hours at the straight-time hourly rate.
2. The employee must attend the funeral.

SECTION XIX. SCOPE OF AGREEMENT

Except as otherwise specifically provided herein, this Agreement fully and completely incorporates the understanding of the parties hereto and constitutes the sole and entire agreement between the parties on any and all matters subject to collective bargaining. Neither party shall, during the term of this Agreement, demand any change therein nor shall either party be required to bargain with respect to any matter. Without limiting the generality of the above, both parties in their own behalf waive any right to demand of the other any negotiating, bargaining or change during the life of this Agreement with respect to pensions, retirement, health and welfare, annuity or insurance plans, or respecting any question of wages, hours, or any other terms or conditions of employment; provided that nothing herein shall prohibit the parties from changing the terms of this Agreement by mutual agreement.

SECTION XX. MEAL MONEY

When an employee is required to work two (2) hours or more beyond his regularly scheduled eight (8) hour shift, he shall be provided meal money of \$1.25. If an employee works the entire shift, he shall receive \$1.25 for the second meal. If

an employee starts work four (4) or more hours ahead of and works his regularly scheduled shift, he shall be provided meal money of \$1.25.

SECTION XXI. TERM OF AGREEMENT

(a) This Agreement shall continue in full force and effect to and including April 1, 1968, and for one (1) year periods thereafter, unless written notice is given by either party hereto to the other at least sixty (60) days prior to April 1, 1968, or to April 1 of any subsequent year requesting that the Agreement be amended or cancelled. During negotiations on amendments, extensions, or renewals, this Agreement shall remain in full force and effect.

(b) At any time after the anniversary date, if no Agreement on the question or questions at issue has been reached, either party may give written notice to the other party of intent to terminate the Agreement in not less than ten (10) days. All provisions of the Agreement shall remain in full force and effect until the specified time has elapsed. During this period attempts to reach an agreement shall be continued.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first hereinabove written.

UNITED STEELWORKERS OF AMERICA

/s/ I. W. Abel

President

/s/ Joseph D. Molony

Vice President

/s/ Walter J. Burke

Secretary-Treasurer

/s/ Charles J. Smith

Director - District 38

/s/ Joseph Angelo

Sub District Director - District 38

/s/ Wm. F. Stumpf

Representative

FOR THE BUILDING MATERIALS,
INDUSTRIAL INSULATION AND
PAINT PLANTS OF FIBREBOARD
PAPER PRODUCTS CORPORATION
AT EMERYVILLE, CALIFORNIA

/s/ R. C. Thumann

Director of Industrial Relations

/s/ J. S. Bope

Manager - Building Materials Plant

/s/ E. W. Torbohn

Manager - Industrial Insulation Plant

/s/ F. M. Isola

Manager - Paint Plant

EAST BAY UNION OF MACHINISTS, LOCAL 1304

/s/ Lloyd Ferber

Business Agent

/s/ Steve Bradford

/s/ Harry Bradford

/s/ David Arca

/s/ Lincoln E. Beck

BEST COPY
from the original

APPENDIX A
TO
AGREEMENT OF JULY 15, 1965
BETWEEN
THE BUILDING MATERIALS, INDUSTRIAL INSULATION AND PAINT
PLANTS OF FIBREBOARD PAPER PRODUCTS CORPORATION AT
EMERYVILLE, CALIFORNIA
AND
UNITED STEELWORKERS OF AMERICA
on behalf of the
EAST BAY UNION OF MACHINISTS, LOCAL 1304

Classification	Straight-Time Hourly Rate Effective		
	July 15, 1965	July 15, 1966	July 15, 1967
Machinist A	\$4.00	\$4.11	\$4.23
Machinist B	4.00	4.11	4.23
Power House Engineer	4.00	4.11	4.23

The straight-time hourly rate for the Working Foreman classification, if used, shall be 10% higher than the effective straight-time hourly rate of Machinist A.

The straight-time hourly rate for the General Working Foreman classification, if used, shall be \$4.90 (effective July 15, 1966, \$5.01; effective July 15, 1967, \$5.13).

APPENDIX B

POWER HOUSE SHIFT SCHEDULE

	M	T	W	Th	F	S	Su	M	T	W	Th	F	S	Su	M	T	W	Th	F	S	Su	M	T	W	Th	F	S	Su	
8 AM - 4 PM	B	R	C	C	C	C	R	D	D	D	D	A	A	A	A	R	B	B	B	B	R	C	C	C	C	C	D		
4 PM - 12 PM	A	A	A	B	B	B	B	C	C	C	C	C	D	D	D	D	D	A	A	A	A	A	B	B	B	B	B		
2 PM - 8 AM	D	D	D	D	D	A	A	A	A	A	B	B	B	B	B	C	C	C	C	C	D	D	D	D	D	A	A	A	
8 AM - 4 PM	D	D	D	R	A	A	A	A	R	B	B	B	B	B	R	C	C	C	C	D	D	D	D	R	A	A	A	A	
4 PM - 12 PM	C	C	C	C	C	D	D	D	D	D	A	A	A	A	A	B	B	B	B	B	C	C	C	C	C	D	D	D	
2 PM - 8 AM	A	A	B	B	B	B	B	C	C	C	C	C	D	D	D	D	A	A	A	A	A	B	B	B	B	B	B	C	
8 AM - 4 PM	R	B	B	B	B	B	C	C	C	C	R	D	D	D	D	R	A	A	A	A	A	R	B	B	B	B	C	C	
4 PM - 12 PM	D	D	A	A	A	A	A	B	B	B	B	B	C	C	C	C	C	D	D	D	D	D	A	A	A	A	A	B	
2 PM - 8 AM	C	C	C	C	D	D	D	D	A	A	A	A	A	A	B	B	B	B	B	C	C	C	C	C	D	D	D	D	
8 AM - 4 PM	C	C	R	D	D	D	D	R	A	A	A	A	A	B	B	B	B	R	C	C	C	C	R	D	D	D	D	D	
4 PM - 12 PM	B	B	B	B	C	C	C	C	C	D	D	D	D	D	A	A	A	A	A	B	B	B	B	B	C	C	C	C	
2 PM - 8 AM	D	A	A	A	A	A	B	B	B	B	B	C	C	C	C	C	D	D	D	D	D	A	A	A	A	A	B	B	
8 AM - 4 PM	R	A	A	A	A	B	B	B	B	R	C	C	C	C	R	D	D	D	D	D	D	A	A	A	A	R	B	B	B
4 PM - 12 PM	C	D	D	D	D	D	A	A	A	A	A	B	B	B	B	B	C	C	C	C	C	D	D	D	D	D	A	A	
2 PM - 8 AM	B	B	B	C	C	C	C	C	D	D	D	D	D	A	A	A	A	A	B	B	B	B	B	B	C	C	C	C	
8 AM - 4 PM	B	R	C	C	C	C	C																						
4 PM - 12 PM	A	A	A	B	B	B	B																						
2 PM - 8 AM	D	D	D	D	D	A	A																						

(REPEAT)

(REPEAT)

OPY AVAILABLE

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[RESPONDENT'S EXHIBIT 10(b)]

AGREEMENT

THIS AGREEMENT, by and between the Martinez, California, Plant of Fibreboard Paper Products Corporation located at 110 Waterfront Road, Martinez, California, hereinafter referred to as the Plant, party of the first part, and the United Steelworkers of America on behalf of the East Bay Union of Machinists, Local 1304, hereinafter referred to as the Union, party of the second part, executed this 7th day of July, 1965, shall be effective July 15, 1965, to and including April 1, 1968, between the Plant and the Union as follows:

WITNESSETH:

SECTION I. WAGE SCALE

The hourly, straight-time, wage-rate schedule is specified in the attached Appendix A.

SECTION II. UNION SHOP

(a) The Plant recognizes the Union as the sole collective bargaining agency for those Employees of the Plant who are listed by occupation under Appendix A of this Agreement.

(b) All employees who are members of the Union on the effective date of this Agreement shall, as a condition of employment, remain members of the Union.

(c) All employees who are not members of the Union on the effective date of this Agreement shall, as a condition of employment, become members thirty (30) days following the effective date of this Agreement.

(d) All new employees hired on or after the effective date of this Agreement shall, as a condition of employment, become members thirty (30) days following his date of employment.

(e) The provisions of this agreement shall be applied to all employees covered by this Agreement without discrimination on account of race, color, creed, national origin, religion or political affiliation.

(f) The Plant shall inform new employees that the Union is the exclusive bargaining agent for all employees in the bargaining unit, and shall introduce the new employee to the Shop Steward.

(g) The Plant shall furnish to the head Shop Steward the name and classification of all new hires and terminations.

APPENDIX A
TO
AGREEMENT OF JULY 15, 1965
BETWEEN
THE MARTINEZ, CALIFORNIA, PLANT OF
FIBREBOARD PAPER PRODUCTS CORPORATION
AND
UNITED STEELWORKERS OF AMERICA
on behalf of the
EAST BAY UNION OF MACHINISTS, LOCAL 1304

Classification	Straight-Time Hourly Rate Effective		
	July 15, 1965	July 15, 1966	July 15, 1967
Machinist A	\$4.00	\$4.11	\$4.23
Machinist B	4.00	4.11	4.23

The straight-time hourly rate for the Working Foreman classification, if used, shall be 10% higher than the effective straight-time hourly rate of Machinist A.

[RESPONDENT'S EXHIBIT 11(a)]

[Caption Omitted in Printing]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA
No. 300282

ORDER ADJUDGING CERTAIN DEFENDANTS
AND CONTEMPORS IN CONTEMPT AND
FIXING PUNISHMENT THEREFOR

The above-entitled matter having come on regularly for hearing beginning on August 24, 1959, and ending on September 11, 1959, upon three separate orders to show cause in re contempt of court dated August 7, 1959, August 13, 1959, and August 24, 1959, respectively, Brobeck, Phleger & Harrison

by Charles E. Hanger and James K. Penker, appearing for plaintiff, and Darwin & Peckham by Jay A. Darwin, appearing for defendants, and the matter having been fully heard and argued and certain counts having been dismissed, all as more fully set forth in the findings of fact and the conclusions of law heretofore signed and filed herein and the matter being now ready for decision:

I

It appearing to the satisfaction of the Court that on the 15th day of August, 1959, defendant East Bay Union of Machinists, Local 1304, United States of America, an unincorporated association (hereinafter called "Local 1304") and contemnor Lincoln Beck, and each of them, did wilfully, intentionally and unlawfully violate the terms and provisions and mandate of that certain restraining order issued out of the above-entitled Court on August 3, 1959, and more particularly set forth in the findings of fact and conclusions of law previously filed herein and that by reason thereof said Local 1304 and the said Lincoln Beck are and each of them is guilty of contempt of the authority of this Court as specified in Count Two of the order to show cause issued out of this Court on the 13th day of August, 1959, and the accompanying declarations of Marion B. Plant and R.C. Thurman.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that defendant Local 1304 shall pay a fine of two hundred fifty dollars (\$250.00), for which amount let execution issue, and that said Lincoln Beck shall be imprisoned in the County Jail of Alameda County for a period of one (1) day.

II

It appearing to the satisfaction of the Court that on the 19th day of August, 1959, defendants Dave Area, and Local 1304, and contemnor Lincoln Beck did wilfully, intentionally and unlawfully violate the terms and provisions and mandate of the temporary restraining order issued out of the above-entitled Court on August 3, 1959, and more particularly set forth in the findings of fact and conclusions of law previously filed herein, and that by reason thereof said Local 1304, the said Dave Area and the said Lincoln Beck are and each of them is guilty of contempt of the authority of this Court as specified in Count One of the order to show cause issued out of this Court on the 24th day of August, 1959, and the accompanying declarations of Hamilton W. Budge and James K. Parker;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that defendant Local 1304 shall pay a fine of two hundred fifty dollars (\$250.00), for which amount let execution issue, and that defendant Dave Area shall be imprisoned in the County Jail of Alameda County for a period of three (3) days and the said contemnor Lincoln Beck shall be imprisoned in the County Jail of Alameda County for a period of one (1) day; the sentence of imprisonment of said contemnor Lincoln Beck shall be served concurrently with the term of imprisonment imposed upon the said Lincoln Beck pursuant to the terms of Paragraph I hereinabove set forth.

III

It appearing to the satisfaction of the Court that on the 19th day of August, 1959, defendants Local 1304 and Dave Arca did wilfully, intentionally and unlawfully violate the terms and provisions and mandate of the temporary restraining order issued out of the above-entitled Court on August 3, 1959, and more particularly set forth in the findings of fact and conclusions of law previously filed herein and that by reason thereof said Local 1304 and the said Dave Arca are and each of them is guilty of contempt of the authority of this Court as specified in Count Three of the order to show cause issued out of this Court on the 24th day of August, 1959, and the accompanying declarations of H. W. Budge and Squire F. Fridell;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that defendant Local 1304 shall pay a fine of two hundred fifty dollars (\$250.00), for which amount let execution issue, and that defendant Dave Arca shall be imprisoned in the County Jail of Alameda County for a period of three (3) days; the sentence of imprisonment of Dave Arca shall be served concurrently with the term of imprisonment imposed upon the said Dave Arca in Paragraph II hereinabove set forth.

IV

It appearing to the satisfaction of the Court that on the 21st day of August, 1959, contemnor C. D. Olson did wilfully, intentionally and unlawfully violate the terms and provisions and mandate of the temporary restraining order

issued out of the above-entitled Court on August 3, 1959, and more particularly set forth in the findings of fact and conclusions of law previously filed herein and that by reason thereof said C. D. Olson is guilty of contempt of the authority of this Court as specified in Count Five of the order to show cause issued out of the Court on the 24th day of August, 1959, and the accompanying declarations of H. W. Budge and Squire F. Fridell;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that contemnor C. D. Olson shall pay a fine of one hundred dollars (\$100.00), for which amount let execution issue.

V

It appearing to the satisfaction of the Court that on the 21st day of August, 1959, defendants Local 1304, Dave Arca and Lloyd Farber and contemnors Lincoln Beck and C. D. Olson and each of them did wilfully, intentionally and unlawfully violate the terms and provisions and mandate of the temporary restraining order issued out of the above-entitled Court on August 3, 1959, and more particularly set forth in the findings of fact and conclusions of law previously filed herein and that by reason thereof said Local 1304 and the said Dave Arca and Lloyd Farber and said contemnors Lincoln Beck and C. D. Olson are and each of them is guilty of contempt of the authority of this Court as specified in Count Six of the order to show cause issued out of this Court on the 24th day of August, 1959, and the accompanying declarations of H. W. Budge and Squire F. Fridell;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that defendant Local 1304 shall pay a fine of two hundred fifty dollars (\$250.00), for which amount let execution issue, and that defendant Dave Arca shall be imprisoned in the County Jail of Alameda County for a period of three (3) days; the sentence of imprisonment of defendant Dave Arca shall be served concurrently with the terms of imprisonment imposed upon the said Dave Arca in Paragraphs II and III hereinabove set forth;

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that defendant Lloyd Ferber shall pay a fine in the amount of one hundred dollars (\$100.00), for which amount let execution issue.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that contemnor Lincoln Beck shall be imprisoned in the County Jail of Alameda County for a period of one (1) day; the sentence of imprisonment of contemnor Lincoln Beck shall be served concurrently with the terms of imprisonment imposed on the said Lincoln Beck in Paragraphs I and II hereinabove set forth.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that said contemnor C. D. Olson shall pay a fine of one hundred dollars (\$100.00), for which amount let execution issue; upon payment by said contemnor C. D. Olson of the fine imposed upon him in Paragraph IV hereinabove set forth, the fine herein imposed is remitted and need not be paid by the said C. D. Olson.

VI

On the 19th day of August, 1952, defendant Dave Arca did wilfully, intentionally and unlawfully violate the terms

and provisions and mandate of the temporary restraining order issued out of the above-entitled Court on August 3, 1959, and more particularly set forth in the findings of fact and conclusions of law previously filed herein and that by reason thereof Dave Arca is guilty of contempt of the authority of this Court as specified in Count Nine of the order to show cause issued out of this Court on the 24th day of August, 1959, and the accompanying declarations of H. W. Budge and Squire F. Fridell;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said defendant Dave Arca shall be imprisoned in the County Jail of Alameda County for a period of three (3) days; the sentence of imprisonment of defendant Dave Arca shall be served concurrently with the terms of imprisonment imposed upon the said Dave Arca in Paragraphs II, III and V hereinabove set forth.

VII

In the event that said defendant Lloyd Ferber and said contemnor C. D. Olson, or either of them, shall default in payment of any of the fines hereinabove imposed upon said individuals in Paragraphs IV and V above, the individual defendant or contemnor so defaulting shall stand committed to the Sheriff of Alameda County and until such fine is paid shall be imprisoned in the County Jail of Alameda County at the rate of one day's imprisonment for each ten dollars (\$10.00) of said fine.

VIII

Execution of the sentences and fines hereinabove imposed is hereby stayed for the period of twenty-one (21) days from October 7, 1959.

Done in open Court this 7th day of October, 1959,
 and signed this ^{DEC 2 1959} day of October, 1959.

Folger Emerson

Judge of the Superior Court

[RESPONDENT'S EXHIBIT 11(b)]

[Caption Omitted in Printing]

FINDINGS OF FACT AND
 CONCLUSIONS OF LAW
 IN RE CONTEMPT OF COURT

The above entitled matter having come on regularly for hearing beginning on August 24, 1959, and ending on September 11, 1959, upon three separate orders to show cause in re contempt of court dated August 7, 1959, August 13, 1959, and August 24, 1959, respectively, Brobeck, Folger & Harrison by Charles E. Hanger and James K. Parker, appearing for plaintiff, and Barrin & Peckham by Jay A. Parkin, appearing for defendants and all alleged contemnors except Richard Grouin, who was not personally served, and said appearing defendants and contemnors having appeared to the respective proceedings for contempt set forth in each order to show cause and having filed affidavits in answer to each of the respective contempt proceedings, and evidence having been presented to the court

by testimony and exhibits, and motions to dismiss having been argued at the conclusion of plaintiff's case, and the court having dismissed all of the counts of contempt (Counts One to Twelve inclusive) of the proceedings for contempt set forth in the order to show cause dated August 7, 1959, and the court having dismissed Count One of the supplementary proceedings for contempt set forth in the order to show cause dated August 13, 1959, and the court having dismissed Counts Two, Seven, Eight and Eleven of the second supplementary proceedings for contempt set forth in the order to show cause dated August 24, 1959, and additional motions to dismiss having been presented to the court at the conclusion of all of the evidence, and the court having further dismissed Count Three of the supplementary proceedings for contempt set forth in the order to show cause dated August 13, 1959, and the court having further dismissed Counts Four and Ten of the second supplementary proceedings set forth in the order to show cause dated August 24, 1959, and the court having further dismissed all of the named defendants and alleged contemnors except East Bay Union of Machinists, Local 1304, United Steelworkers of America, AFL-CIO, an unincorporated association, (hereinafter called "Local 1304"), Dave Area, Lloyd Farber, Lincoln Beck, also known as L. E. Beck, and C. D. Olson from the remaining counts, (Count Two of the supplementary proceedings for contempt set forth in the order to show cause dated August 13, 1959, and Counts One, Three, Five, Six and Nine of the second supplementary proceedings set forth

in the order to show cause dated August 24, 1959), and the matter having been fully presented and argued by respective counsel, the court makes its findings of fact and conclusions of law as follows:

FINDINGS OF FACT

I

On the 3rd day of August, 1959, in the above-entitled action brought by the above-named plaintiff against the above-named defendants, the defendants and each of them, their officers, agents, representatives, servants, employees, deputies, members and pickets, and each of them, and all persons acting in concert with them, were, among other things, by a temporary restraining order of the above entitled court, duly given and made by said court on said 3rd day of August, 1959, restrained and enjoined from committing or performing, directly or indirectly, or by any means whatsoever, any of the following acts, to wit:

(a) Picketing plaintiff's plant in Emeryville, Alameda County, California, or any of the gates or entrances thereof by the use of more than two pickets or other representatives, at any entrance or gate.

(b) Patrolling or congregating at, in, or in front of any entrance or gate of the said premises in any other manner and in any other part than permitted herein, or in any other manner resulting in and obstructing or denying ingress to or egress from any entrance or gate from said plant, or obstructing or interfering with the ingress or egress of any

of plaintiff's officers or employees or persons doing or attempting to do business with plaintiff;

(c) Intimidating, coercing, threatening or committing bodily harm or physical violence or property damage to any person entering or leaving or attempting to enter or leave the premises of said plant;

(d) Engaging in any conspiracy to perform any of the acts hereinabove set forth in subparagraphs (a) through (c);

(e) Stationing, placing or maintaining any picket or pickets with the intention or for the purpose of accomplishing any of the actions enjoined in subparagraphs (a) through (c) above.

Said temporary restraining order was in full force and effect from August 3, 1959, to August 24, 1959.

II

At all times herein mentioned East Bay Union of Machinists, Local 1304, United Steelworkers of America, AFL-CIO, an unincorporated association, (hereinafter called "Local 1304"), was and is an unincorporated association and labor organization acting as the collective bargaining representative of certain persons and affiliated with United Steelworkers of America, AFL-CIO, an unincorporated association. At all times herein mentioned defendants Lloyd Farber and Dave Area were members and acting business agents of Local 1304 and were acting for and on behalf of said Local 1304. At all times herein mentioned defendants Lincoln

Beck, also known as L. E. Beck, and C. D. Olson were and are members of Local 1304 and were acting for and on behalf of said Local 1304.

III

At all times herein mentioned subsequent to August 7, 1950, Local 1304, Dave Aron, Lloyd Barber, Lincoln Beck and C. D. Olson, and each of them, had notice and knowledge of the temporary restraining order referred to in Paragraph I hereof and of the contents thereof and at all such times said named persons had the ability to comply with said temporary restraining order.

IV

(Count Two Supplementary Proceedings for Contempt)

On the 10th day of August, 1950, Local 1304 and Lincoln Beck did from about 6:25 A.M. to about 7:05 A.M. on said day continuously, wilfully, intentionally and unlawfully violate said temporary restraining order in that said Local 1304 and Lincoln Beck and other persons acting on behalf of said Local 1304 did openly congregate, station and maintain themselves at and around the intersection of 64th and Hollis Streets, in the City of Emeryville, California, and did forcibly obstruct and interfere with the ingress of plaintiff's employees to the 64th Street entrance of plaintiff's plant in said City of Emeryville.

V

(Count One Second Supplementary
Proceedings for Contempt)

On August 19, 1959, at about 10:15 A.M., at a point on 64th Street near its intersection with Overland Street, in the City of Emeryville, California, contemnor Lincoln Beck and defendant Dave Area did wilfully, intentionally and unlawfully violate said temporary restraining order in that the said Lincoln Beck did place his hand upon the chest of James K. Parker, one of the attorneys for plaintiff herein, and did thereby block the ingress of said James K. Parker into plaintiff's Emeryville plant and did fail to remove his hand from the chest of said James K. Parker when requested to do so and did cause other pickets in the area to encircle said James K. Parker and Charles E. Hanger so as to block their ingress into said plant. Said Dave Area did strike said Charles E. Hanger once on the head and once in the mouth, breaking two teeth, and did thereby impede the ingress of the said Charles E. Hanger and James K. Parker into plaintiff's said plant.

VI

(Count Three Second Supplementary
Proceedings for Contempt)

On August 21, 1959, at about 6:58 A.M., at a point on 64th Street between Hollis and Overland Streets, in the City of Emeryville, California, Local 1304 and Dave Area, and each of them, did wilfully, intentionally

and unlawfully violate said temporary restraining order in that said Dave Area did then and there deliberately and violently drive a 1945 Ford pickup truck into and against and into collision with an automobile carrying persons who desired to make ingress into plaintiff's Emeryville plant for the purpose of blocking said attempted ingress.

VII

(Count Five Second Supplementary Proceedings for Contempt)

On August 21, 1953, at about 7:01 A.M., at and along 64th Street between Hollis and Overland Streets, in the City of Emeryville, California, contemnor C. D. Olson did wilfully, intentionally and unlawfully violate said temporary restraining order in that said C. D. Olson did throw rocks and other objects at automobiles in which persons were attempting to make ingress into plaintiff's Emeryville plant.

VIII

(Count Six Second Supplementary Proceedings for Contempt)

On August 21, 1953, at approximately 7:00 A.M., at and along 64th Street, between Hollis and Overland Streets, in the City of Emeryville, California, defendants Local 1304, Dave Area, Lloyd Ferber, and contemnors Lincoln Beck and C.D. Olson, and each of them, did wilfully, intentionally and unlawfully violate said temporary restrain-

ing order in that said defendants and contemnors and others did picket said Emeryville plant and did patrol and congregate at the entrance of said plant and did obstruct and deny ingress and egress to and from said plant and did intimidate, coerce and threaten and cause bodily harm and property damage to persons attempting to enter or leave said plant.

IX

(Count Nine Second Supplementary
Proceedings for Contempt)

On the 19th day of August, 1959, at about 7:22 A.M., at a point on 64th Street approximately 150 feet east of the intersection of 64th and Overland Streets, Emeryville, California, defendants Local 1304, Dave Arca and Lloyd Ferber did wilfully, intentionally and unlawfully violate said temporary restraining order in that said Dave Arca did then and there drive a truck in front of a car in which persons seeking to gain ingress into plaintiff's plant were riding, thereby obstructing 64th Street and said above named persons, including Local 1304, did then and there coerce and intimidate and commit physical violence upon said persons desiring to enter plaintiff's plant.

CONCLUSION OF LAW

I

The temporary restraining order duly given and made by this court on the 3rd day of August, 1959, and referred to in paragraph I of the Findings of Fact hereinabove

set forth was in full force and effect at all times from August 3, 1959, to August 24, 1959.

II

At all times herein mentioned East Bay Union of Machinists, Local 1304, United Steelworkers of America, AFL-CIO, an unincorporated association, (hereinafter called "Local 1304") and its officers and business agents, including Dave Area and Lloyd Farber and its members, including Lincoln Beck and C.D. Olson, all of which named individuals were acting for and on behalf of said union, and each of them, had notice and knowledge of said temporary restraining order and of the contents thereof, and at all such times said Local 1304 and said named persons had the ability to comply with said temporary restraining order.

III

On the 10th day of August, 1959, defendant Local 1304 and defendant Lincoln Beck and each of them did willfully, intentionally and unlawfully violate the terms and provisions and mandate of said temporary restraining order, and that by reason thereof said Local 1304 and the said Lincoln Beck are, and each of them is, guilty of contempt of the authority of this court as specified in said order to show cause issued out of this court on the 13th day of August, 1959, and the accompanying affidavits of Marion B. Plant and F.C. Thuman, and said Local 1304 and Lincoln Beck shall be punished therefor according to law and the further order of this court.

IV

On the 19th day of August, 1959, defendants Dave Area and Local 1304 and contemnor Lincoln Beck did wilfully, intentionally and unlawfully violate the terms and provisions and mandate of said temporary restraining order, and that by reason thereof said Local 1304, Dave Area and Lincoln Beck are, and each of them is, guilty of contempt of the authority of this court as specified in said order to show cause and the accompanying affidavits of Hamilton W. Budge and James K. Parker, and said Dave Area, Lincoln Beck and Local 1304 shall be punished therefor according to law and the further order of this court.

V

On the 19th day of August, 1959, defendant Local 1304 and defendant Dave Area did wilfully, intentionally and unlawfully violate the terms and provisions and mandate of said temporary restraining order, and that by reason thereof said defendants Local 1304 and Dave Area were, and each of them is, guilty of contempt of the authority of this court as specified in said order and to show cause issued out of this court on the 24th day of August, 1959, and the accompanying affidavits of Hamilton W. Budge and Squire F. Fiddell, and said Local 1304 and Dave Area shall be punished therefor according to law and the further order of this court.

VI

On the 21st day of August, 1959, defendant C.D. Olson did wilfully, intentionally and unlawfully violate the terms and provisions and mandate of said temporary restraining order, and that by reason thereof said defendant C.D. Olson is guilty of contempt of the authority of this court as specified in said order to show cause and the accompanying affidavits of Hamilton W. Budge and Squire P. Fridell, and said C.D. Olson shall be punished therefor according to law and the further order of this court.

VII

On the 21st day of August, 1959, defendants Local 1304, Dave Area and Lloyd Forber and contemnors Lincoln Beck and C.D. Olson, and each of them, did wilfully, intentionally and unlawfully violate the terms and provisions and mandate of said temporary restraining order, and that by reason thereof said defendants and contemnors are guilty of contempt of the authority of this court as specified in said order to show cause and the accompanying affidavits of Hamilton W. Budge and Squire P. Fridell, and said defendants and contemnors shall be punished therefor according to law and the further order of this court.

VIII

On the 19th day of August, 1959, defendants Dave Area and Lloyd Forber, and each of them, did wilfully,

intentionally and unlawfully violate the terms and provisions
and spirit of said temporary restraining order, and that
by reason thereof said defendants are guilty of contempt
of the authority of this court as specified in said order to
show cause and the accompanying affidavits of Hamilton W.
Dudge and Esquire F. Swidell, and said defendants shall be
punished therefor according to law and the further order of
this court.

Dated this 7th day of September, 1959. *E. J. O'Connell*

FOLGER EMERSON

Judge of the Superior Court

[RESPONDENT'S EXHIBIT 18]

ANALYSES OF HOURS WORKED DURING 1964
BY MILLWRIGHTS EMPLOYED AT EMERYVILLE
BY CONTRACTOR

Total hours worked at Emeryville by contractor's millwrights during 1964 ^{1/}	27,544.00
Average hours per man worked during the base period by machinists (excluding working foremen) who worked the full period ^{2/}	2,077.89
Number of Millwrights in terms of average base period hours of machinists (27,544 ÷ 2,077.89)	13.25
Number of millwrights required for machinists' work	11.00
Number of millwrights engaged in work other than that of machinists (rigging, welding, pipefitting) ^{2/}	2.25

^{1/} From Union Exhibit 21.

^{2/} The computation is based on the quarterly earnings set forth in Appendix A of the Specification. Straight time pay for 2,080 hours per man (40 hrs. per wk. x 52 wks.) was deducted from total base period earnings to obtain base period overtime earnings. Overtime earnings were translated into overtime hours by dividing overtime earnings by the overtime rate. There was then deducted from the total paid straight and overtime hours three weeks' vacation (120 hours) and eight holidays (64 hours) to obtain the hours actually worked as set forth above. The computation could not be made to include working foremen because they did not necessarily work at working foremen's rates during the entire base period.

^{3/} In July, 1959, there were employed at Emeryville five welders and riggers and nine pipefitters. The contractor's millwrights did not only the work of the machinists but also the work of the riggers and welders and a substantial part of the work of the pipefitters. Testimony of William Maffee.

[RESPONDENT'S EXHIBIT 20]

East Bay Union of Machinists
 Local 1304

UNITED STEELWORKERS OF AMERICA, AFL-CIO

1307 SAN PABLO AVENUE
 EMERYVILLE 5, CALIFORNIA

TELEPHONE OLYMPIA 4-2000

DAVE ARCA
 LLOYD H. FERBER
 GEORGE ADAMS
 EDWIN HANCOCK
 FRANK J. DEWITT
 FRANK J. DEWITT
 FRANK J. DEWITT

June 31, 1957

Fibre Board Products
 P.O. Box 317 Bayshore Station
 Oakland, 23, California

Attention: Mr. Thumann

Gentlemen:

The Fibre Board Pension Plan has been presented to the Members of this Union working in your Plant, and has been accepted by the Machinists in principle, however there is one point we would like to ask be clarified, and also ask for consideration on: - That is the fact that the Machinists Group were off work some fourteen weeks through no fault of their own during the year 1949—due to labor difficulties with another union.

We are requesting that any adjustments be considered for the above stated period. We believe such adjustment could be made in accordance with Section 11 - paragraph 1, page 23 of the Fibre Board Pension Plan.

Trusting you will give this matter your immediate attention as we may be able to conclude the Pension negotiations, and with best wishes, we remain,

Respectfully yours,

EAST BAY UNION OF MACHINISTS
 LOCAL 1304 U.S. of A., AFL-CIO

/s/ _____
 Lloyd H. Ferber - Business Agent

/s/ _____
 David Arca - Business Agent

[RESPONDENT'S EXHIBIT 23]

Miss D. Hansen.

8-14-57

Hersewith are principal points covered in recent discussions with Springfield Union concerning Fibreboard Retirement Plan.

W. S. Edwards

1. Amend Plan to cover employees of Fibreboard Paper Products Corp.
2. Amend Plan to provide Post Service Benefits for Fibreboard Paper Products Corp. employees, up to date of participation in plan. Post service benefits to be computed on the following basis:
 - a) $\frac{1}{2}$ of 1% of 1st 3,000 of annual earnings, plus 1% of annual earnings in excess of 3,000, for each year of employment prior to participation in the plan, less five years. For all years 1952 and prior the 1948-1952 ave. annual earnings will be used. Actual earnings will be used for the years 1953 to participation in plan.

BEST COPY
from the original

For Ensignville employees
the 1949 strike period is to be counted as
time worked.

Past Service Benefits not to be borne by Co.
Amend Plan to exclude from eligibility
to participate in the Retirement Plan any
employee who is covered by a negotiated Plan.

Questions and answers concerning Plan:

1) Can Co. back away any group from
participation in Plan.

— No, not our intent; not condoned
by Treasury Dept. If employees negotiate
a Plan, then they must resign.

2) Can present employees defer retirement?

— Policy is to retire people at 65. The
minimum and maximum benefits are built
around this. However, we can expect other
members to be able to work in accordance
with section 17, pages 26-27

3) Joint Annuity Provisions.

Death benefit not affected. Age at
 spouse important. Can take pension in straight
 annuity payment to either as long as both live,
 or higher while both alive, dropping when one
 dies.

4) Is sick pay counted as ^{part of} gross earnings for computing base rate?

Probably counting but not as permanent
 contribution credit.

5) Is amount of Plan contingent on all union signing up?

— Probably not. Treasury Dept.
 will be interested in actuarial affect of
 new group & might require sign-up.

6) What about coverage when a man transfers temporarily from one group which has Plan, to another which has union negotiated Plan?

— No mechanics set up to handle.

As long as company avoided double contributions
 there is no problem. Otherwise we would handle
 like a lay-off.

8)

What would be effect on employee if promoted to supervisory position.

- No effect - he continues in Plan

9)

How are disability benefits figured?

Need is important here. Benefits to which employee is entitled are programmed to meet his needs as nearly as possible.

10)

If an employee reaches his 5th anniversary while on lay-off how does he enroll.

- He has 30 days to enroll following return from lay-off.

FIBREBOARD RETIREMENT PLAN

Following are the amendments that we anticipate will be made to the Fibreboard Retirement Plan:

1. Amend plan to cover employees of Fibreboard Paper Products Corporation.
2. Amend plan to provide Past Service Benefits for Fibreboard Paper Products Corporation employees, up to the date of commencement of participation in the Fibreboard Retirement Plan. (See Note 1 below)

3. Various technical amendments may be required in Sections covering definitions, etc.
4. Amend plan to exclude from eligibility to participate in the Retirement Plan any employee who is covered by a negotiated plan.

Note 1. Past service benefits - $1\frac{1}{2}\%$ of $1\frac{1}{2}\%$ of the first \$3,000. of annual earnings, plus $1\frac{1}{2}\%$ of annual earnings in excess of \$3,000. for each year of employment prior to participation in the plan, less five years.

Past annual earnings will be based on the 1948 through 1952 work period for all years 1952 and earlier.

The entire cost of these benefits is to be borne by the company.

[RESPONDENT'S EXHIBIT 24(b)]

December 6, 1956

Mr. Florin Bennett
Beverlyville

Dear Mr. Bennett:

This is to remind you that your Normal Retirement Date is December 1, 1962 and to advise you of your privilege of selecting an optional form of retirement income.

The normal form of retirement income pays you full monthly retirement income payments during your life, with refund at your death, to your beneficiary, of any deposits in excess of retirement income paid you.

You may select one of the following optional forms of retirement income in place of the normal form of retirement income by giving three years' prior notice.

(a) A "full joint and survivor annuity" which provides reduced monthly retirement income payments during your life and, upon your death, continues payments in the same amount to one other person known as the "joint annuitant" during his or her life.

(b) A "modified joint and survivor annuity" which provides reduced monthly retirement income payments during your life and, upon your death, continues payments in one-half the amount to one other person known as the "joint annuitant" during his or her life.

In addition to Options (a) and (b), another form of retirement income payment, equal in value to the normal form, can be worked out between you and the Retirement Plan Committee, if you so desire.

A member may name as a joint annuitant only his spouse or a dependent relative of the member by blood, adoption or marriage.

If the joint annuitant dies before your Normal Retirement Date, you would then receive the normal form of retirement income. Once you have selected an optional form of retirement income, you must obtain the written consent of the Retirement Plan Committee to change either the form of retirement income or the joint annuitant named.

If you are interested in an optional form of retirement income write to the Retirement Plan Committee, 475 Brannan Street, San Francisco and we will be glad to work up some estimates for you. In order to do this we will need to know what type of option you are interested in and whom you would name as your joint annuitant together with the date of birth of the joint annuitant.

Will you please give this matter your consideration, because if you wish to choose an optional form of retirement income you must advise the Retirement Plan Committee in writing no later than December 1, 1959 of the option selected and the name of the joint annuitant.

We suggest you check into the effects that Federal and State Inheritance and Estate Taxes may have on the option you are considering.

Very truly yours,

RETIREMENT PLAN COMMITTEE


D. Hanson, Secretary

DH:BET:bd

[RESPONDENT'S EXHIBIT 25]

November 20, 1961

Mr. Joseph Freitas
Emeryville Division

Dear Mr. Freitas:

This is to remind you that your Normal Retirement date is December 1, 1962 and to advise you of your privilege of selecting a "Joint and Survivor" optional form of retirement income, as described in Section 22 of the Retirement Plan booklet.

The normal form of retirement income as described in Section 9 pays you full monthly retirement income payments during your life, with refund at your death, to your beneficiary, of any deposits in excess of retirement income paid you.

You may select one of the following optional forms of retirement income in place of the normal form of retirement income, as described above, by giving notice at least one year prior to retirement:

- (a) A "full joint and survivor annuity" which provides reduced monthly retirement income payments during your life and upon your death continues payments in the same amount to one other person known as the "joint annuitant" during his or her life.
- (b) A "modified joint and survivor annuity" which provides reduced monthly retirement income payments during your life and upon your death continues payments in one-half the amount to one other person known as the "joint annuitant" during his or her life.

In addition to Options (a) and (b), another form of retirement income payment, equal in value to the normal form, can be worked out between you and the Retirement Plan Committee, if you so desire.

A member may name as a joint annuitant only his spouse or a dependent relative of the member by blood, adoption, or marriage.

If the joint annuitant dies before your Normal Retirement Date, you would then receive the normal form of retirement income. Once you have selected an optional form of retirement income, you must obtain the written consent of the Retirement Plan Committee to change either the form of retirement income or the joint annuitant named.

If you are interested in an optional form of retirement income, write to the Retirement Plan Committee, 475 Brannan Street, San Francisco, and we will be glad to work up some estimates for you. In order to do this, we will need to know what type of option you are interested in and whom you would name as your joint annuitant together with the date of birth of the joint annuitant.

Will you please give this matter your consideration, because if you wish to choose an optional form of retirement income, you must advise the Retirement Plan Committee in writing no later than December 1, 1961 of the option selected and the name of the joint annuitant.

We suggest you check into the effects that Federal and State Inheritance and Estate Taxes may have on the option you are considering.

Very truly yours,

RETIREMENT PLAN COMMITTEE

D. Hanson, Secretary

DH:EC:ls

cc: 1.

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[RESPONDENT'S EXHIBIT 26]

Mr. L. K. Seely
South Gate Gypsum

475 Brennan Street
Retirement Plan Committee
February 23, 1961
Retirement age
Floyd Turner

June 1, 1962 is given as the Normal Retirement Date for Floyd Turner. Since you have questioned this date, we will explain how it was determined.

Please refer to the Fibreboard Retirement Plan Booklet, Page 31, Section 17 (e). This section refers to the members who come into the Plan under Section 6 (d) - and they are Pabco hourly employees, listed under the various unions.

The effective date of the Fibreboard Retirement Plan was September 1, 1945. Section 17 (b) explains the extension of retirement age for those members who had attained age 60, but were not yet 65. Referring again to Section 17 (e), this section gives the same type of extension to the Pabco hourly employees and substitutes their unit eligibility date - February 1, 1958 - for September 1, 1945, which means normal retirement date for these members shall be the first day of any calendar month elected by the member following the attainment of age 65, but not later than the first day of the calendar month next following the attainment of the fifth birthday subsequent to February 1, 1958, the date the Plan was made available to Mr. Turner through negotiations.

Mr. Turner's date of birth was May 30, 1897. Therefore, his age on February 1, 1958 was 60-8/12.

First birthday following February 1, 1958	May 30, 1958
Second " " " " "	May 30, 1959
Third " " " " "	May 30, 1960
Fourth " " " " "	May 30, 1961
Fifth " " " " "	May 30, 1962

Although it is not applicable in Mr. Turner's case, we would like to call your attention to the reference to age 70 in Section 17 (c). The five year extension does not apply past age 70.

We hope this explanation is satisfactory. If you have further questions in regard to this matter, please feel free to get in touch with us.

RETIREMENT PLAN COMMITTEE

D. Hanson, Secretary

DH:MC:ls

cc: Mr. R. C. Thumann
Mr. J. M. Hogue

[RESPONDENT'S EXHIBIT 27]

H. Van der Velden

South Gate Gypsum

475 Brannan Street

Retirement Plan Committee

February 16, 1962

Normal Retirement Date

WILLIAM NASH

The purpose of this letter is to remind
you that the above-captioned employee
will attain Normal Retirement Age on

August 1, 1962.

RETIREMENT PLAN COMMITTEE

D. Hanson, Secretary

DH:EC:ls

P. S. We estimate his monthly retirement income under the Fibreboard
Plan will be \$52.34.

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[RESPONDENT'S EXHIBIT 28]

MAXIMUM LABOR COSTS CRAFTS AT EMERYVILLE

	No. EMPLOYEES	
TOTAL NUMBER MACHINISTS AT 7-30-59	53	
LESS: NUMBER REACHING RETIREMENT AGE	2	
NUMBER LACKING SENIORITY	2	
DECEASED	1	5
MAXIMUM TO BE REINSTATED 9-13-62	48	
LESS: NUMBER REACHING RETIREMENT AGE BY 7-1-63	10	
MAXIMUM NUMBER AS OF 7-1-63	38	
MAXIMUM COST 7-13-62 TO 7-1-63 (1) & (2)	\$ 306,689	
LESS: RETIREMENT INCOME	3636	
MAXIMUM NET LABOR COST	\$ 303,053	7510 750
MAXIMUM MONTHLY RATE AFTER 7-1-63	\$ 29,236	✓ 80

(1) LABOR HOURS BASED ON STANDARD 173 PER MONTH PER EMPLOYEE.

(2) LABOR RATE USED IS ACTUAL HOURLY RATE EACH EMPLOYEE WAS RECEIVING AT 7-30-59 PLUS HOLIDAY PAYROLL TAXES & ALL BENEFITS @ 34% PER LABOR DOLLAR.

9 working

3 own business

BUDGETS & ANALYSIS
BRADYMAN ET.

BY 7/10/63.

8/15/63 RCT - Report that 80% of men have reported to MARRB and 8 are working at 7.00 & others are earning high rates. RCT estimates liability at 100.

[RESPONDENT'S EXHIBIT 29]

MEETS 1ST AND 3RD THURSDAY
OF EACH MONTH AT 8 00 P. M.

ERNIE PERRY
PRESIDENT

DAVE ARCA
RECORDING SECRETARY

EDDIE HAMEL
FINANCIAL SECRETARY

GEORGE ADAMS
TREASURER

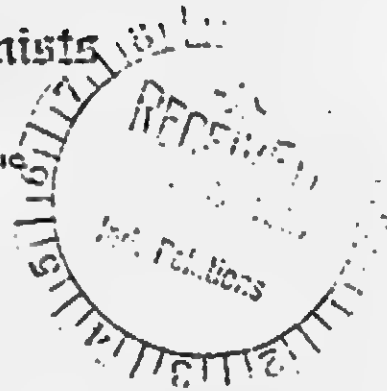
LLOYD H. FERBER
BUSINESS AGENT

East Bay Union of Machinists Local 1304

UNITED STEELWORKERS OF AMERICA, AFL-CIO

3637 SAN PABLO AVENUE
EMERYVILLE 8, CALIFORNIA

TELEPHONE OLYMPIC 4-2660



Pabco Division of Fibreboard Products
Foot of 64th Street
Emeryville, California

December 4, 1957

Attention: Mr. Thumann.

Gentlemen:

This letter will reaffirm the agreement reached on Pensions in negotiations and participation of the members of this union in so far as Employee contributions to be effective January 1, 1958.

Hoping this meets your understanding, I remain,
with best wishes.

Respectfully,

EAST BAY UNION OF MACHINISTS
LOCAL 1304 U. S. of A., AFL-CIO

Lloyd H. Ferber
Lloyd H. Ferber
Business Agent

LHP/jk
USA-3702-AFL-CIO
CC: L. E. Beck

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[UNION'S EXHIBIT 2]

*Note: change on Holiday Letter of 7-31-49.
Notice of 60 days.*

4-1-49

7-31-50

Notice 60 days -

(Not automatically
Renewable)AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of May, 1949, by and between the Emeryville Plant of THE PARAFFINE COMPANIES, INC., party of the first part, hereinafter known as the Employer, and the EAST BAY UNION OF MACHINISTS, LOCAL 1304, UNITED STEELWORKERS OF AMERICA, C.I.O., party of the second part, hereinafter known as the Union, shall be effective April 1, 1949 and shall continue in full force and effect until July 31, 1950.

WITNESSETH:

If any changes are desired in the hours, wages and working conditions established in this Agreement, sixty (60) days' notice prior to the expiration of this Agreement shall be given in writing by either employers or employees, parties of this Agreement.

Prior to the commencement of negotiations each party shall give to the other party written notice of the sections to be opened. All other sections will remain in full force and effect.

SECTION I. WAGE SCALE:

The hourly straight time wage rate schedule, as specified in Appendix "A" attached, is effective for the period April 1, 1949 to and including July 31, 1950, provided, however, that on June 30, 1949, this hourly straight time wage rate schedule shall be reviewed and such adjustments as are required by the application of The Paraffine Companies, Inc. wage formula for the Building and Construction Crafts will be made effective for the balance of the contract period.

APPRENTICE STANDARDS:

It is agreed that working conditions and rules governing apprentices will conform to the standards as in effect throughout the jurisdiction of the East Bay Union of Machinists as specified in attached apprentice agreement.

APPRENTICE WAGES:

Apprentices shall be paid not less than the following percentages of the journeyman's wages:

1st 928 hours 52 per cent	5th 928 hours 69½ per cent
2nd 928 hours 56½ per cent	6th 928 hours 74 per cent
3rd 928 hours 60 per cent	7th 928 hours 82½ per cent
4th 928 hours 65 per cent	8th 928 hours 91 per cent

RATIO OF APPRENTICES TO JOURNEYMEN:

Every employer who employs 1 or more journeymen steadily may employ one apprentice; and one additional apprentice for every 10 additional journeymen steadily employed.

[UNION'S EXHIBIT 16]

MEMBERS OF EAST BAY UNION OF MACHINISTS, LOCAL 1304

TERMINATED ON 7/31/59

RETIREMENT PLAN STATUS

	NAME	JOB	AGE 1/1/55	COMP. SER. RET. AGE	COMP. SER. RET. DATE	ACTUAL RET. DATE	PARTICIPATED IN RET. PLAN	REASON RECEIVING PER MONTH	WITHIN SPECIAL PENS. INT.
1.	C. W. OLSON	FIREMAN	53 ²	65	-	-	YES	-0-	YES
2.	H. F. HAUTER	ENG.	54 ¹⁰	65	-	-	YES	-0-	YES
3.	F. L. LOWELL	ENG.	63 ¹	65	12-1-66	8-1-59	YES	\$58.56	NO
4.	G. R. NOVACEK	FIREMAN	51 ¹⁰	65	-	-	YES	-0-	YES
5.	E. T. JOHNSON	ENG.	62 ⁹	65	4-1-67	8-1-59	YES	\$41.58	NO
6.	R. E. HUGHES	ENG.	65 ³	65	10-1-64	8-1-59	YES	\$52.06	NO
7.	E. G. MANN	FIREMAN	61 ⁴	65	-	-	YES	-0-	YES
8.	J. J. VAN ZUEN	FIREMAN	52 ²	65	-	-	YES	-0-	YES
9.	T. P. VANDERBEEK	FIREMAN	46 ¹	65	-	-	YES	-0-	YES
10.	J. R. WALK	FIREMAN	43 ⁴	65	-	-	YES	-0-	YES
11.	J. L. GIFFIN	ENG.	38 ⁷	-	-	-	NO	-	-
1.	M. CRISPINO	MECH.	68 ³	66 ³	1-1-63	8-1-59	YES	\$108.11	NO
2.	R. HAMIDY	MECH.	68 ¹	66 ¹	1-1-63	8-1-59	YES	\$80.66	NO
3.	J. S. CRUZE	MECH.	64 ³	65	10-1-65	8-1-59	YES	INCOME DEFERRED	NO
4.	J. P. JOHNSON	MECH.	70 ⁵	68 ⁵	1-1-63	8-1-59	YES	\$121.95	NO
5.	N. C. JACKSON	MACH.	54 ¹¹	65	-	-	YES	-0-	YES
6.	L. C. RAINERI	MECH.	57 ⁵	65	-	-	YES	VESTED	NO
7.	L. J. NASH	MACH.	65 ¹⁰	65	3-1-64	8-1-59	YES	\$62.41	NO
8.	L. R. TOBE	MECH. (DECEASED 11-4-59)				8-1-59	YES	\$35.91	NO
9.	F. F. BENNETT	MECH.	70 ¹	68 ¹	1-1-63	8-1-59	YES	\$77.85	NO
10.	J. HOMEN	MECH.	56 ³	65	-	-	YES	VESTED	NO
11.	L. E. BECK	MACH.	52	65	-	-	YES	-0-	YES
12.	C. L. FONTES	MACH.	49	65	-	-	YES	-0-	YES
13.	S. SMITH	MACH.	75 ²	70	11-1-59	8-1-59	YES	\$105.27	NO
14.	F. C. JOHNSON	MECH.	62 ³	65	10-1-67	8-1-59	YES	INCOME DEFERRED	NO

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	NAME	JOB	AGE	COMPULSORY	ACTUAL	PARTICIPATED	PENSION	WITH	
			1/1/65	RET. AGE	RET. DATE	RET. DATE	PER MONTH	STEW	
15.	G.W. GORANSON	MACH.	49 ⁵	65	-	-	YES	-0-	YES
16.	D.A. GRONBERG	MACH.	70"	68"	1-1-63	8-1-59	YES	371.15	NO
17.	D.C. WITTORFF	MACH.	66 ⁷	65	4-1-63	8-1-59	YES	-0-	YES
18.	J.E. LONGNECKER	MECH.	49 ⁵	65	-	-	YES	-0-	YES
19.	M.H. SCHENFELD	MECH.	51 ⁷	65	-	-	YES	-0-	YES
20.	R.B. JENSEN	MECH.	55 ⁴	65	-	-	YES	-0-	YES
21.	A.F. HOLMES	MACH.	70 ⁴	68 ⁴	1-1-63	8-1-59	YES	-0-	YES
22.	N.L. FULLER	MACH.	73 ⁷	70	6-1-61	8-1-59	YES	552.47	NO
23.	D.F. CAPPS	MECH.	70 ⁷	68 ⁷	1-1-63	8-1-59	YES	449.15	NO
24.	F.F. SCHLOTTERBECK	MACH.	64 ⁸	65	-	-	YES	-0-	YES
25.	D. ARCA	MACH.	48 ⁵	65	-	-	YES	-0-	YES
26.	H.C. BRADFORD JR.	MACH.	47 ³	65	-	-	YES	-0-	YES
27.	J. PRICE	MECH.	56 ¹	65	-	-	YES	-0-	YES
28.	A.J. FUSARE	MECH.	48 ¹	65	-	-	YES	-0-	YES
29.	H.L. CUNNINGHAM	MECH.	56 ¹	65	-	-	YES	-0-	YES
30.	W.W. REINH	MACH.	47	65	-	-	YES	-0-	YES
31.	J.J. O'LEARY	MACH.	54 ⁶	65	-	-	YES	-0-	YES
32.	D.W. LIPPERT	MECH.	48 ¹⁰	65	-	-	YES	-0-	YES
33.	G. WEISMILLER	MACH.	44 ²	65	-	-	YES	-0-	YES
34.	J.J. AIELLO	MACH.	44 ⁷	65	-	-	YES	-0-	YES
35.	R.C. HICKS	MACH.	39 ⁵	65	-	-	YES	-0-	YES
36.	H.J. HALL JR.	MACH.	37	65	-	-	YES	-0-	YES
1.	G. OSWILL	STOCKROOM	55 ²	65	-	-	YES	-0-	YES
2.	E.J. HICKATHIER	TRUCK SH.	55"	65	-	-	YES	VESTED	NO
3.	A.R. BERGSTROM	MECH. HELP	68 ⁷	66 ⁷	1-1-63	8-1-59	YES	854.78	NO
4.	A. STEWART	MECH. HELP	67 ⁸	65 ⁸	1-1-63	8-1-59	YES	-0-	YES

BUOYS & ANALYSIS
MARCH 66

(2)

AVAILABLE

bound volume

[UNION'S EXHIBIT 17]

BROBECK, PHLEGER & HARRISON
ATTORNEYS AT LAW
ONE ELEVEN SUTTER STREET
SAN FRANCISCO 94104
SUTTER 10363

March 24, 1965.

Mr. M. C. Dempster, Compliance Officer,
National Labor Relations Board,
Twentieth Region,
450 Golden Gate Avenue,
San Francisco, California 94102.

Re: Fibreboard Paper Products
Corporation v. NLRB.

Dear Mr. Dempster:

Enclosed are six schedules computing what the men represented by the East Bay Union of Machinists would have earned at Fibreboard during the period from September 15, 1962, to January 18, 1965, had their employment not been terminated on July 31, 1959. An explanation of the schedules, and of the assumptions upon which they are based, follows:

Schedule A classifies the men employed as of July 31, 1959, as Power House employees, Machinists and Helpers, and lists the men in each classification in the order of their seniority. The Power House classification is broken down into engineers and firemen, and the Machinists classification is broken down into machinists properly so-called and mechanics.

The schedule also shows the compulsory retirement dates of men who would have retired prior to January 18, 1965, the date of death of the one man known to us to have died, and the names of those who forfeited their right to back pay by picket line violence (i.e., those who were convicted of contempt of court on account of such violence).

Schedule B computes for each man his average earnings per quarter during the year ending July 31, 1959. The schedule takes into account overtime and vacation pay.

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Schedule C shows the average number of men employed by the contractor during each quarter from September 15, 1962, through January 18, 1965.

You will note that the schedule lists machinists and mechanics. This is based on the ratio of machinists to mechanics contained in Fibreboard's offers of reinstatement. You will recall that the 19 men for whom Fibreboard figured it had jobs included eight machinists and seven mechanics (the remaining four were power house employees).

Schedule D shows what the men classified as machinists (properly so-called) would have earned during the period from September 15, 1962 to January 18, 1965, based upon the following assumptions: (1) that their average quarterly earnings would have been the same as set forth on Schedule B with certain adjustments hereinafter explained, (2) that the average number of men employed per quarter would have been as set forth on Schedule C, and (3) that the men would have been called for available work in the order of their seniority.

On August 1, 1962, a wage rate of \$3.605 per hour went into effect under certain of the contracts of Local 1304 with other employers having comparable work, and on September 1, 1964, the rate went up to \$3.74 per hour. In preparing Schedule D, the earnings shown on Schedule B were increased by the respective percentages by which the rates just mentioned exceeded the rate of \$3.525 per hour which Fibreboard was paying its machinists and mechanics on July 31, 1959.

You will note (1) that certain of the men reached their compulsory retirement dates during the back pay period and are not credited with earnings thereafter, (2) that the men who, because of lack of seniority, would have worked only a part of the time are credited with only fractional earnings, and that the men who, because of lack of seniority, would have worked none of the time are credited with no earnings.

While Schedule D computes what L. E. Beck and D. Arca would have earned, these two men, by their picket line violence, forfeited their right to back pay.

Schedule E relates to mechanics. It corresponds to Schedule D and is subject to the same explanation and comments.

Schedule F relates to power house employees. It corresponds to Schedule D and is subject to the same explanation and comments plus the following:

Prior to July 31, 1959, Fibreboard employed five engineers and five firemen. Schedule F assumes that Fibreboard would have continued to employ the same number until January, 1964, when the installation of automatic controls eliminated the fireman's job. The contractor reduced his staff of firemen to two at the end of 1963, and continued to employ those two only during a brief changeover period. The firemen's earnings are computed accordingly.

While Schedule F computes the earnings of C. W. Olson, he forfeited his right to back pay by his picket line violence.

Concluding Comment

A number of men elected to take early retirement on August 1, 1959, and have been receiving pension benefits. These include the following: F. L. Lowell, E. T. Johnson, R. E. Hughes, M. Crispino, R. Hamidy, J. P. Johnson, L. J. Nash, P. F. Bennett, D. A. Gronberg and D. F. Capps. Fibreboard's retirement plan is enclosed. I assume that these men should be treated as having been reemployed commencing on September 15, 1962, with the consequences set forth in section 19 of the plan. More particularly:

(1) Fibreboard should be credited against back pay liability with pension payments made from September 15, 1962, to the man's compulsory retirement date.

(2) Fibreboard should be credited against back pay liability with the amounts which the man should have deposited during the foregoing period in the pension fund.

(3) The man should receive current service credits for the foregoing period.

(4) The pension benefits accrued since the man's compulsory retirement date should be recalculated as provided in section 19.

Each of the men terminated on July 31, 1959, was paid a severance allowance. I assume that Fibreboard should be credited against back pay liability with the amount of this allowance.

We will supply you in due course with Fibreboard's computation of the various credits hereinabove mentioned.

I assume that you will advise me as soon as the information is available of what each man has earned during each quarter of the back pay period, of the source or sources from which your information is derived, and whether it has been checked against social security records.

Very truly yours,

Marion B. Plant

Marion B. Plant.

MBP:LG

Enclosures.

SCHEDULE "A"

Members of East Bay Union of Machinists, Local 1304,
Terminated on 7/31/59

<u>Reference</u>	<u>Job</u>	<u>Comment</u>	<u>Hire Date</u>
1. *P. L. Lowell	Engineer		6/2/24
2. ✓ A. E. Hughes	Engineer	Retirement date 10/1/64	8/5/37
3. *E. F. Haueter	Engineer		9/20/33
4. *E. T. Johnson	Engineer		12/5/36
5. ✓ G. R. Kovacek	Fireman		11/30/36
6. C. W. Olson	Fireman	Convicted of contempt	3/1/39
7. E. G. Mann	Fireman		10/27/39
8. J. J. Van Zoen	Fireman		4/2/40
9. *J. L. Giffin	Engineer		11/5/35
10. J. R. Wall	Fireman		8/12/38
<u>Machinists</u>			
11. ✓ L. J. Nash	Machinist	Retirement date 3/1/64 ✓	10/3/33
12. *W. C. Jackson	Machinist		6/23/33
13. ✓ E. Smith	Machinist	Retirement date 11/1/59 ✓	1/5/33
14. L. E. Beck	Machinist	Convicted of contempt	4/27/36
15. ✓ D. A. Gronberg	Machinist	Retirement date 1/1/63 ✓ ✓	10/12/39
16. ✓ D. C. Wittorff	Machinist	Retirement date 4/1/63 ✓	2/19/40
17. ✓ A. P. Holmes	Machinist	Retirement date 1/1/63 ✓	8/12/41
18. ✓ R. C. Fuller	Machinist	Retirement date 6/1/61 ✓	10/21/41
19. ✓ W. Crispino	Mechanic	Retirement date 1/1/63 ✓	12/7/41
20. ✓ R. Hamidy	Mechanic	Retirement date 1/1/63 ✓ ✓	10/1/47
21. *J. S. Cruze	Mechanic		1/30/48
22. ✓ J. P. Johnson	Mechanic	Retirement date 1/1/63 ✓ ✓	6/22/33
23. L. R. Jobe	Mechanic	Died 11/4/59	10/9/33
24. *F. C. Johnson	Mechanic		4/1/37
25. *F. Schlotterbeck	Machinist		6/10/42
26. ✓ F. F. Bennett	Mechanic	Retirement date 1/1/63 ✓ ✓	7/27/35
27. *H. K. Schoenfeld	Mechanic		5/10/40
28. B. Area	Machinist	Convicted of contempt	3/11/43

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	<u>NAME</u>	<u>Job</u>	<u>Comment</u>	<u>Hire Date</u>
	#1. H. Coranson	Machinist		5/28/37
	#2. R. B. Jensen	Mechanic		9/21/40
	#3. D. F. Capps	Mechanic	Retirement date 6/1/63 ✓	12/22/41
	#4. J. B. Longnecker	Mechanic		3/25/40
	#5. H. C. Bradford, Jr.	Machinist		11/12/46
	#6. A. J. Fusare	Mechanic	Feb 62 - retired 1/1/63	2/12/47
	#7. J. Price	Mechanic	5/1 - retired 1/1/63	2/25/47
	#8. H. L. Cunningham	Mechanic		3/3/47
	#9. L. C. Raineri	Mechanic		9/11/33
	#10. W. W. Reihl	Machinist		8/5/37
	#11. V. J. O'Leary	Machinist		6/31/41
	#12. C. L. Fontes	Machinist		9/25/45
	#13. D. W. Lippert	Mechanic		8/10/50
	#14. J. P. Vanderbeck	Machinist		9/26/50
	#15. G. Weismiller	Machinist		5/21/51
	#16. J. J. Aiello	Machinist		5/24/51
	#17. R. C. Hicks	Machinist		3/19/52
	#18. H. J. Hall, Jr.	Machinist		9/22/53
	#19. J. Homen	Mechanic		4/2/56
	#20. H. Swisher	Mechanic	Oct 55 - retired 6/1/61	
	#21. A. Yochs	Mechanic	Sept 55 - retired 6/1/61	
	<u>Depot</u>			
	#22. G. Oswill	Storeroom		9/20/33
	#23. E. J. Hickethier	Truck Shop		10/7/33
	#24. A. R. Bergstrom	Mechanic	Retirement date 1/1/63	3/26/34
	#25. A. Stewart	Mechanic	Retirement date 1/1/63	11/29/45

* Offered immediate employment.

Offered place on preferred list.

AVAILABLE

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[UNION'S EXHIBIT 18]

APPENDIX TO MASTER AGREEMENT BETWEEN THE ASSOCIATION OF
NORTHERN CALIFORNIA DISTRIBUTORS AND THE UNION

THE PARAFFINE COMPANIES, INC., 1550 Powell Street, Emeryville, California, having adopted that certain Master Agreement made and entered into the eleventh day of June, 1947, by and between the Distribution Association of Northern California and the Warehouse Union, Local 6, IWW, and said Union hereby amend and supplement said Master Agreement as it applies to the Paraffine Companies, Inc. only in the following respects.

Section 2 of the Master Agreement shall be interpreted as recognizing the Union as the sole collective bargaining agency for all employees in the following ten named bargaining units:

- (a) 1. Felt Mill, 2. Roofing, 3. Slate, 4. Sandle, 5. Multigraph, 6. Magnesia (formerly known as Plant #2 of Plant, Rubber and Asbestos) Departments, hereinafter called the Manufacturing Section.
- (b) 7. Shipping, and Receiving Departments, 8. Container Departments, hereinafter called the Warehouse Section.
- (c) 9. Service.
- (d) 10. Plant Protection.

Section 3 of the Master Agreement is modified only with respect to paragraphs 1 & 2 thereof which shall be retained to read as follows:

"The Company agrees that, when available, new employees will be hired through the offices of the Union. The Company reserves the right to hire only employees who are in its judgment experienced and competent, and if the Union is unable to furnish satisfactory employees, the Company may hire from any source. However, any employee so hired must become a member of the Union within seven (7) days after their employment. The Company will notify the Union Steward in such case and it shall be his responsibility that the employee conforms to this requirement. Membership in the Union shall be a condition of employment of all employees covered by this Agreement."

Section 4 of the Master Agreement is modified and supplemented to provide that:

- (a) If an employee is notified to report for work and does not report within five (5) days or give a satisfactory explanation for not reporting, he shall be considered as having voluntarily quit.
- (b) In the application of this section separate seniority lists shall be maintained for each bargaining unit as contained in Section 2 of this Agreement.
- (c) Seniority shall not apply to any employee until he shall have been employed for a period of three (3) months accumulated within a period of twelve (12) consecutive months.

Section 5 of the Master Agreement, Paragraph 2 thereof shall read as follows:

"The Employer shall not discriminate against any employee because of Union membership or activities. If any employee feels that he has been unjustly discharged, he shall have the right to appeal his case within five (5) days through the grievance procedure set up in this Addendum. Should satisfactory settlement not be reached within ten (10) days, the employee shall have the right to appeal his case to the Association Adjustment Board. Such appeal must be filed in writing by the Union within three (3) working days from the ten-day limit specified above, and unless so filed, the right of appeal is lost. In case the discharge is found to be unjustifiable by the Board, the Board may order payment for lost time or reinstatement with or without payment for lost time;

but, in the event that the dispute is carried to arbitration and that such employee is found to have been properly discharged under the provisions of Paragraph 1 of this section, such employee may not be ordered reinstated and no penalty may be assessed upon the Employer. There shall be no cessation of work pending decision."

Section 6 of the Master Agreement is supplemented to provide that the chief steward of each of the sections, namely, the Manufacturing Section and the Warehousing Section, covered by this Agreement will be scheduled on straight day shift work and shall carry the job rate to which his seniority entitles him.

Section 8 of the Master Agreement is modified to read as follows:

"All hours worked by an employee in excess of eight (8) per day or forty (40) per week shall be paid for at one and one-half (1½) times the straight time rate. Except for the penalty time provided for in Section 12 of the Master Agreement, however, there shall be no pyramiding of overtime. No employee shall be scheduled to work more than eight (8) hours on Sunday, unless by mutual agreement by Union and Company. *9m7*

Day workers shall receive time and one-half (1½) for Saturday work as such. **AND DOUBLE TIME FOR SUNDAY WORK AS SUCH. 7m7**

Shift workers for the first eight (8) hours premium time within a work week shall receive time and one-half (1½); for all premium time in excess of eight (8) hours in one week shift workers shall receive double time. For the purpose of determining double time hours, no day which is a premium day as such (i.e. Sundays, holidays, etc.) will be counted as the first eight (8) hours of premium time. Sunday shall be a time and one-half (1½) day as such. *9m7*

The Company will post a shift schedule at least forty-eight (48) hours previous to start of the work week. All time worked outside of the posted shift schedule will be at premium time. In the event of an emergency requiring the transfer of an employee from one shift to another, twenty-four (24) hours notice will be given such employee. Any time worked off his regular shift within the twenty-four (24) hour period will be at premium time. Such emergency moves may be a proper subject for grievance committee consideration, if, in the opinion of the Union, this privilege is being abused by the Employer."

Section 9 of the Master Agreement is supplemented to provide in addition to its other provisions that all work performed on holidays shall be paid for at two times the hourly straight time rate.

No work except plant protection work shall be done on holidays except by mutual agreement between the Union and the Company.

Under no conditions shall any work be performed on Labor Day, except that which is necessary for the security of the plant. Shut-down period for Christmas 12, shall be from 4:30 P.M. on December 24th to 7:00 A.M. on December 25th. Shut-down period for New Years Day shall be from 4:30 P.M. on December 31st to 7:00 A.M. on January 2nd.

Section 10 of the Master Agreement is amended to provide that the minimums therein specified shall apply only to employees who actually start to work at their specified times and shall apply both to regular and overtime days.

This section is further supplemented to provide that employees listed on the bulletin board to report for work and who report for work at their specified time but for whom no work is provided, shall receive a minimum of two (2) hours pay at the prevailing rate unless they are notified of a change of shift before the end of their last preceding shift, except in emergencies such as fire, earthquake or breakdown of equipment.

Section 11 of the Master Agreement is amended to provide that there is a minimum meal period penalty of one-half (1/2) hour's pay at the overtime rate.

Section 15 (a) of the Master Agreement shall be modified and supplemented to establish minimum wage rates in accordance with the attached appendices and to provide that:

- (1) Employees, when asked to work on a higher rated job (except personal and lunch relief) will receive the higher rate unless working with an instructor for training purposes.
- (2) When an employee works a minimum of three (3) hours on a higher rated job without an instructor, he will receive the higher rate for the entire shift.
- (3) Short Changes: A short change shall be regarded as less than 12 hours off between shifts. No employee can make a short change at straight time rate.
- (4) When a rated job no longer exists, it is the right of the Company to reduce the rate of the employee on that job to the next lower rate consistent with the employee's seniority and ability to handle the job, provided that the employee is a member of the Union.
- (5) If in the opinion of the Company a man is no longer capable of performing a given rated job; it is the right of the Company to reduce that employee in rank and rate, and the Chief Steward of the Union will be notified.
- (6) Where there is, temporarily, no work available for a rated man in his classification and promotional group it shall be the policy of the Company to use this man on base rate work. He will be used on other rated jobs when no qualified man is available. In all such cases, the man retains his regular rate.

Section 15 (b) of the Master Agreement is amended to provide that:

- (1) The work day shall be eight (8) hours in a maximum of eight and one-half (8 1/2).
- (2) The work week shall be forty (40) hours between 12:01 A. M. Monday and Midnight Friday, except on continuous operations or shift schedules. The Company agrees that no equipment covered by this Agreement will start operations before 7:00 A.M. Monday, unless it is on a seven (7) day schedule or unless mutually agreed upon.
- (3) Employees shall remain on their job until the end of their scheduled shift, unless relieved by their mates. In no event may they punch out until after the end of their scheduled shift. In the event they are not relieved by their mates, they shall inform their foreman or supervisor and will be expected to remain on the job until properly relieved.
- (4) No employee will be allowed to work two (2) sixteen-hour shifts in

- (5) Men who work on intermittent operations i.e. operations that can be shut down for relief and for lunch, but who also relieve on non-intermittent operations, shall work eight (8) hours in eight (8) and shall receive the lunch period on Company time.
- (6) Within a given job classification and promotional group, overtime work offered will be equalized as nearly as possible.

This section is further supplemented as follows:

REST PERIODS

- (1) The Company will provide in each eight (8) hour shift, two (2) relief periods of ten (10) minutes from the time of leaving the job until returning to the job, one period before lunch and one after.
 - (a) Where men are located in areas of considerable distance from their dressing rooms, additional reliefs may be provided by the foreman for traveling time but in no case will relief extend beyond fifteen (15) minutes from the time of leaving the job until returning to the job.
- (2) Warehousing Section - On extended shifts, a relief period will be provided at the end of the regular eight (8) hours and for each two (2) hours or the equivalent thereafter; lunch periods counting as relief periods. At the end of the regular shift where extra work is expected to be less than one (1) hour, a ten (10) minute relief period will be provided. Where extra work is expected to be over one (1) hour, a twenty (20) minute lunch period will be provided.
- (3) Manufacturing Section - On extended shifts, a relief period will be provided during the ninth (9th) hour and each two (2) hours or equivalent thereafter; lunch periods counting as relief periods. At the end of the regular shift where extra work is expected to be less than one (1) hour, a ten (10) minute relief period will be provided. Where extra work is expected to be over one (1) hour, a twenty (20) minute lunch period will be provided.
- (4) Employees working on production shall relieve each other wherever and whenever possible.
- (5) Should production be such that relief is not possible they shall call their foreman and he will provide relief.

LUNCH PERIODS

- (1) Warehousing Section:
 - (a) On all day work between the hours of 7:00 A.M. and 5:00 P.M. there will be a lunch period of thirty (30) minutes on the employee's time.
 - (b) On work providing for continuous operation there shall be a lunch period of twenty (20) minutes on the Company's time.
 - (c) On production line work the lunch period shall be the same as the production machine crew.
 - (d) On all other work there shall be a lunch period of twenty (20) minutes.

(2) Manufacturing Section:

- (a) On continuous operation, twenty (20) minutes on Company time. Continuous operation is defined as twenty-four (24) hour operation or shift work when the operation is such that the machine cannot be shut down.
- (b) On non-continuous operations between the hours of 7:00 A.M. and 5:00 P.M. there shall be a lunch period of thirty (30) minutes on the employee's time.
- (c) In the machine room of the No. 1 Mill employees will take lunch as time permits.

Section 15 (c) of the Master Agreement is understood to continue the previous agreement between the parties with respect to shift differentials i.e.,:

Night shift differentials shall constitute a five cent (5¢) hourly increase on the Solar shift and ten cents (10¢) hourly increase on the Graveyard shift.

1. For the purpose of differential computation, shifts are defined as follows:
 - (a) Day Shift - 7:00 A.M. to 3:00 P.M. through 3:30 P.M. to 4:30 P.M.
 - (b) Swing Shift - 3:00 P.M. to 4:30 P.M. through 11:30 P.M. to 12:00 Midnight
 - (c) Graveyard - 11:30 P.M. to 12:00 Midnight through 7:00 A.M. to 8:00 A.M.

2. All shift work shall be rotated by the type of work.

Section 15 (d) of the Master Agreement is supplemented to provide that:

- (1) Employees having completed one year's service at any date during the calendar year will be granted one (1) week paid vacation at straight time rate after that date.
- (2) Employees having completed two years' service at any date during the calendar year will be granted two (2) weeks paid vacation at straight time rate after that date.
- (3) Vacation pay hours will be determined by totaling the number of hours worked in each week of the previous year during which the employee worked forty (40) hours or more and dividing by the number of weeks during which the employee worked forty (40) hours or more. Forty (40) straight time hours are the minimum and forty-eight (48) straight time hours are the maximum pay hours for week of vacation. The rate of pay for a paid vacation will be the regular base rate that the employee is receiving at the time his vacation is taken.
- (4) Service as referred to above shall mean continuous employment. An employee must complete six (6) months continuous service without layoff before he becomes eligible for a vacation at the end of one (1) year.
- (5) When an employee is granted a leave of absence or is laid off due to lack of work, layoff to be not more than six (6) months. Such absence or layoff shall not break continuity of employment. Leave of absence or layoff is to be counted as service time.
- (6) Employees must report to the Personnel Department to fill out required vacation cards at least three (3) days before leaving on vacation.
- (7) An employee on the hourly payroll may receive his vacation pay upon leaving and will receive his regular earnings on the pay day following his return.
- (8) When an employee leaves the employ of the Company he shall receive vacation pay if due — except for the following reasons:
 - (a) Discharge for Cause, i.e., theft, insubordination, or breach of working in prohibited areas.
 - (b) Failure to give notice.

Section 19 of the Master Agreement is amended to provide that all such notices must have the approval of the Plant Personnel Department.

Section 20 of the Master Agreement shall be deemed imperative and not applicable to the Company. The following provisions shall be substituted therefor:

The Company and the Union mutually agree that a stabilized working force is an important factor in the continued success of an enterprise and are employees. To this end the Company will place certain of its present hourly workers on the weekly payroll. It is mutually agreed that should this plan prove unsatisfactory to the Union or the Company it may be withdrawn at the end of the contract year by either party. The Salary Plan is as follows:

- (a) Employees covered by this Agreement who have completed five (5) years of consecutive service with the Company shall be transferred from the hourly payroll to the weekly payroll and shall be paid in accordance with the schedule in the attached appendix.
- (b) The annual base salary for each classification shall be determined by multiplying the hourly rate for the classification by the standard salary (2080) hours (forty (40) hours per week times fifty-two (52) weeks). One fifty-second (1/52) of this total will be paid each eligible employee each pay period.
- (c) Employees in this group will also receive overtime payments and any additional pay for work performed in higher classifications than their regular rates each pay period.
- (d) Employees on a salary basis are entitled to sick leave and holidays without deductions from their base pay. In case of permanent or semi-permanent illness or when continuous sick leave of more than ninety (90) days is involved, the company will review and make such adjustment in such individual case as is in conformity with its general policies covering sick leave for those of its employees on permanent monthly payroll.
- (e) Salaried employees covered by this Agreement will be given two (2) weeks notice before lay off and there will be no lay off from the salaried group until all hourly wage earners covered by this Agreement have been previously terminated.
- (f) Employees absent from work due to illness must present satisfactory evidence from a qualified physician concerning the illness. This physician may be the employee's own doctor or the Company's Medical Department. It shall be the mutual responsibility of the Company and the Union to see that such evidence is forth coming.
- (g) Inasmuch as the success of this undertaking is dependent upon the integrity of the individual employee, it is mutually agreed between the Company and the Union that increased absence in this group will not be tolerated. There shall be a deduction from the base salary for all unauthorized absences. The amount of deduction shall be the hourly rate of pay times the number of hours of absence. Continued unauthorized absence by any employee on the weekly payroll may result in discharge.
- (h) Should it become necessary for the Company to operate any of the departments covered by this contract at less than forty (40) hours per week for a protracted period, it is mutually understood that the Union and the Company will meet and revise the Salary Plan in keeping with conditions at the time.
- (i) In industrial injury cases, Workmen's Compensation and sick benefit allowances shall be paid separately, but in event Workmen's Compensation payments cover all or part of the period during which sick benefit allowances are paid the sum of the two shall not exceed the sick benefit payable for said period.

Section 12 of the Master Agreement is modified with respect to paragraph 1 thereof to read as follows:

- (a) A Shop Committee of the Union operating under union supervision shall be maintained in the plant to represent the Union in the adjustment of any complaints, disputes or grievances in connection with this Agreement. To be eligible to serve on this committee an employee actually must have worked in the plant for six months prior to his election on this Committee.
- (b) Any complaint or grievance which arises is to be taken up in writing by the Steward with the proper foreman. The foreman will give his decision in writing giving a copy to the Union within forty (40) hours and will forward the grievance and his decision to the Dept. Superintendent.
- (c) If the grievance is not settled it shall be presented to the Department Superintendent who will put his decision in writing giving a copy to the Union within forty (40) hours.
- (d) If still not adjusted the grievance shall next be taken up within forty (40) hours, unless otherwise by mutual consent, by the Shop Committee of the Union and its Business Representative with the Personnel Manager, Industrial Relations Manager and the Plant Manager. A complete written report of this stage should be sent to both the Company and the Union.
- (e) If still not adjusted the matter will be taken up within one week unless extended by mutual consent, by the Union with the Vice-President - Manufacturing, written records of such a meeting will be sent to both Company and the Union.
- (f) If still not adjusted it shall be referred to the Adjustment Board.
 - (1) The Board shall be composed of three (3) members selected by the Company and three (3) members selected by the Union. Alternates shall be named also, who shall have no voice nor vote unless actually serving as a member of the Board.
 - (2) The Board shall investigate and render decisions on matters referred to it. Any decision rendered by the majority of the board shall be the decision of the Board and shall be binding on both parties.
- (g) If the Company Adjustment Board is unable to render a mutually satisfactory decision, the matter shall be referred for adjudication in accordance of Sections 21 and 23 of the Master Agreement, itself.

To the Master Agreement as modified and amended by this Addendum, the following provisions are added:

Jurisdictional Disputes

All questions of jurisdiction arising between the Union and any other labor organization will be settled by the organization in question. The Company will not be asked to act in such matters.

Promotions and Transfers

- (1) For the Purpose of promotion the Manufacturing and Warehousing Sections will be divided into groups as noted:

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Manufacturing Section

- a. Felt Mill
 - (1) Machine Room
 - (2) Stock Preparing Department
- b. Roofing Department
- c. Slate Department
- d. Sample Department
- e. Multigraph Department
- f. Magnesia Department

Warehousing Section

- a. Shipping Department
 - 1. Nail and Platform and Export Crows
 - 2. Felt Base Warehouse
 - 3. Roofing Warehouse
 - 4. Paint Warehouse
 - 5. Linoleum Warehouse
- b. Receiving Department
- c. Container Department

Service DepartmentPlant Protection Department

- a. Fire Department
- b. Watch Department

Employees in the Plant Protection and Service Departments may be recruited from any Union or department in the plant providing those men are considered to be inadequate for regular jobs in that department due to age or disability. No transfer outside this Union's jurisdiction will be made, until such transfer is taken up with the Union.

(2) Promotion within a group shall be by seniority providing the man has the capacity and general fitness to do the work.

(3) The Company will maintain a posted list of qualified employees who are eligible for the extra work on each rated job. Employees with seniority who are qualified for rated jobs will be given an opportunity to train for those jobs. This list will also be the basis for making permanent promotions.

(4) The Union and the Company mutually agree to the principles of transferring men with seniority from one promotional group covered by this Agreement to another during periods of slackness of work under the following conditions.

- (a) Employees with seniority who are laid off in one group due to slackness of work shall have first opportunity for employment in other groups.
- (b) Employees so transferred will have no promotional seniority in the group to which they are transferred but will retain their plant seniority which will apply when they return to their original group.
- (c) If, subsequent to their transfer, it becomes necessary to reduce forces in the group to which they are transferred, the transferees will be laid off in order of their seniority in their original group before any regular employee with seniority is affected.

(5) An employee wishing to transfer from one promotional group to another shall notify his foreman who in turn will notify the Department Head, who will make a transfer if possible, providing the employee is qualified.

(a) Employees so transferred will have no promotional seniority in the group to which they are transferred.

(b) An employee making such a transfer will be paid at the basic rate for the job to which he is transferred.

(6) The Company shall have the right to use an employee from one department as a relief man in another, provided the regular scheduled relief man fails to show up for work and provided no man in that department is available for the job. The Chief Steward will be notified in such cases.

This addendum is made and entered into in pursuance of the Memorandum of Terms which on May 31, 1947 the Union and the Association Negotiating Committees agreed to recommend to their respective memberships, and which was accordingly recommended to their respective memberships on June 3 and June 4, 1947, and which was approved by such memberships on said dates. The obligations incurred by the parties on consideration of the execution of the Master Agreement on June 11, 1947 and expressed in writing in the joint statement of the parties, also dated June 11, 1947, are fulfilled by the execution of this Addendum.

Paint Pickers, Set-Up Checkers, Warehouse Checkers	1.35
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Loading Checkers, Car Drivers, Light Truck Drivers, Bin Repair Checkers, Night Floorman in Peit Base Warehouse	1.37½
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Sub-Foreman (Hour Basis Only)	1.42½
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SERVICE DEPARTMENT

Janitors	1.27½
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PLANT PROTECTION

Assistant Fire Chief	1.46
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Fireman	1.27½
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Watch Service Men	1.27½
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CONTAINER DEPARTMENT

Sawyers	1.42½
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Knifing Machine Operators	1.32½
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Millers	1.27½
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1. The above rates are effective as of June 1, 1947.
2. Checkers shall do no physical work but shall be held responsible for the quality and quantity of their work.
3. Supervisory Foreman shall do no manual work or make any machine adjustments, but will issue all instructions regarding the operation to the machine tenders and the Sub-Foreman.
4. Only regularly recognized sub-foreman shall carry the rate of sub-foreman. Other employees asked to perform the supervisory work shall receive the sub-foreman rate while actually performing supervisory work.
5. When an employee is scheduled to come to work and can not report, it is the full responsibility of the employee to contact his super-

visory foreman. If his supervisory foreman can not be contacted, then the Personnel Department or suitable substitute shall be contacted, and the name of the person so contacted, obtained by the employee.

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION, LOCAL 1-6

Robert M. Mace

THE PARAFFINE COMPANIES, INC.

Exec Vice-President - *[Signature]*

Secretary

APPENDIX "A"

1947

to
ADDENDUM FOR

THE PARAFFINE COMPANIES, INC.

To the Master Contract dated June 11, 1947 between the
DISTRIBUTOR'S ASSOCIATION OF NORTHERN CALIFORNIA
and
INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION
LOCAL 1-6

WAREHOUSING SECTION

Employees engaged in operation in Receiving, Shipping, and Container
Departments of the Employer at Emeryville Plant.

RECEIVING DEPARTMENT

CLASSIFICATION

MINIMUM HOURLY RATES

Reighers, Warehousemen, Roundabouts, Unloaders, Electric & Gasoline Truck Drivers and Yard Sweepers	1.27 1/2
Front Platform Man (When working with Checker)	1.30
Front Platform Man (When working without Checker)	1.32 1/2
Rig Pilot Man (Two)	1.30
Transfer Man, #7 Driver and Helper	1.32 1/2
Lift Truck Drivers	1.37 1/2
Unloading Checkers	1.37 1/2
Point Transfer Man, Containers	1.37 1/2
Dumpster Driver	1.40
Sub-Foreman (Hour Basis Only)	1.42 1/2

SHIPPING DEPARTMENT

Weights, Warehousemen, Routes, Loaders, Electric & Gasoline Truck Drivers, Sample Outlets, Labels, Lowwater Relief Man	1.27 1/2
Lowwater Man, Paint Roll-out Man	1.30
Set-up Man, Label & Gasoline Machine Operators, Payroll Man, Shipping Warehouse	1.32 1/2

APPENDIX "B"

1947

TO

ADDENDUM FOR THE PYRAMINE COMPANIES, INC.

To the MASTER CONTRACT dated June 11, 1947 between the
 DISTRIBUTOR'S ASSOCIATION OF MARYLAND CALIFORNIA
 and
 INTERNATIONAL LONGSHOREMEN & WAREHOUSEMEN'S UNION,
 LOCAL 1-6

WAREHOUSEMEN SECTION

Employees engaged in the operation of the Port Mill, Roofing, Slats, Sample, Multigraph, and Magazine Departments of the Employer at the Maryville Plant.

CLASSIFICATIONHOURLY RATE BY RATEFIRST MILLMachine No. 1

Machine Tender	1.66 1/2
Back Tender	1.39 1/2
3rd Hand	1.32

Machine No. 2

Machine Tender	1.66 1/2
Back Tender	1.39 1/2
3rd Hand	1.32 1/2
4th Hand	1.30

Stock PreparationCotton and Factor Room

Working Foreman	1.62 1/2
Factor Tender	1.46 1/2
Stack Man	1.35 1/2
Wife Man	1.34 1/2
Outlet Man	1.32
Scale Man	1.31
Stock Checker	1.30

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Miscellaneous Operations

Screen Plate Man	1.33½
End Plate Man	1.39½
End Plate Helper	1.32
Reinforcer Operator	1.32
Crane Man	1.46½
Jordan Room Clean Up	1.30
Working Foreman (Felt Storage)	1.62½

Asphalt:

Asphalt Operator	1.39
Asphalt Helper	1.28½
Chipper Man	1.30

Felt Mill Jobs remaining at base rate are:

Clean Up Man other than Jordan Room Clean Up
 Reinforcer Helper
 General Helpers
 Man in Training

Millwright Group

(Rates determined by Machinists Contract)

Belt Man	1.79
Wood-worker	1.79
Oiler	1.46
Millwright Helper	1.46

ROOFING DEPARTMENT

Machine No. 1	
Machine Tender	1.51
Scrap Stone	1.35½
Winder	1.43½
Wrapper	1.33½
Take-Off	1.30
Helper	1.27½

Machine No. 2	
Saturator	1.30 (Effective 8-12-47)
Raw Felt	1.30 (Effective 8-12-47)
Winder	1.43 (Effective 8-12-47)
Take-Off	1.34½ (Effective 8-12-47)

Machine No. 3	
Machine Tender	1.65
Raw Felt	1.30
Coating Applicator	1.30
Finish Applicator	1.34½
Press Roll Operator	1.30
Winder - Shingle Cutter Tender	1.46
Wrapper - Wire Tye	1.37
Take-Off - Scale Man	1.32
Shingle Machine Operator	1.46½

POORING DEPARTMENT (Cont.)

<u>Machine No. 3</u>	1.45
Machine Tender	1.37
Slinder	
<u>Machine No. 5</u>	1.57
Machine Tender	1.30
Raw Feils	1.55 1/2
Roll Tender	1.53 1/2
Front Tender	
<u>Machine No. 6</u>	1.39 1/2 (Effective 2-21-77)
Seventher	1.35 1/2
Winder	
<u>Miccolaneous</u>	1.44
Re-Roll Technician	1.40 1/2
Slitter Operator	1.36 1/2
Lead Man - Capping	1.32
Re-Roll Table Operator	
<u>Rolls</u>	1.35 1/2
Winder (Lead Man)	1.31
Stripper	1.30
Saturator	
<u>Machine Inspection</u>	1.43
Winder (Lead Man)	1.32
Box Man	1.32
Take-Off	
<u>Machine File</u>	1.38
Support Man (Lead Man)	1.33 1/2
Air Press Operator	

SLATE DEPARTMENT

Line Operator	1.51
Grade Man	1.25 1/2
Grass Man	1.31
Coloring Operator	1.34 1/2
Ball Mill Operator	1.37
Conveyor Man	1.35 1/2
Finish Truck	1.31
Helpers	1.27 1/2

Jobs remaining at hand after 7:30:
 Machine File Worker, Re-Roll. and Winder;
 Machine Inspection Operator, Winder Helper,
 Capping, Box Man, Finisher Worker, Conveyor and Winder
 Slitter Helper
 Tape Helper
 Sweeper
 Miscellaneous Machine Helpers
 Car Set Workers, Helpers in Slate Department

SLATE DEPARTMENT

Sample Maker	1.35 1/2
Male Helpers	1.23 1/2
Female Helpers	1.12 1/2

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MULTIGRAPH DEPARTMENT

Multigraph Operator (1st shift machine)	1.27 1/2
Multigraph Operator (2nd shift machine)	1.30
Multigraph Operator (3rd shift machine)	1.33
Multigraph Operator (4th shift machine)	1.35
Multigraph Operator (5th shift machine)	1.37 1/2

MACHINERY DIVISIONProcessing Department

Sub-foreman (Only when regular foreman is absent)	.30 per hour premium
Cook and Filler Operator	1.50
Hold Filler	1.40 1/2
Take-Off Man	1.37
Transfer Man	1.32
Glue-Up Man	1.31

Machining Department

Oven Unloader	1.34 1/2
Canvaser	1.34 1/2
Drier Unloader	1.31
Dust Man	1.30
General Labor (Including special milling)	1.27 1/2
Oven Unloader's Helper	1.30

Shipping Department

SHIPPING CLERK	1.27 1/2
Lift Truck Operator	1.37 1/2
General Labor (Includes crate labor, warehouseman, sweepers, etc.)	1.27 1/2

Base rate jobs include Canvas Spreader, Extra Packaging Labor, Helpers and Sweepers.

ASST SHIPPING CLERK

1.32 1/2

1. These rates shall be effective June 1, 1947.
2. Remainder man, when not on his regular job, will be used in the Machine Room, if possible.
3. Supervisory foreman shall do no manual work or make any machine adjustments, but will issue all instructions regarding the operation of machines to the machine tenders, sub-foreman, or working foreman.
4. Only regularly recognized sub-foreman shall carry the rate of sub-foreman. Other employees asked to perform supervisory work shall receive the sub-foreman rate while actually performing supervisory work.
5. When an employee is scheduled to come to work and can not report, it is the full responsibility of the employee to contact his supervising foreman. If his supervising foreman can not be contacted, then the Personnel Department shall be contacted and the name of the person so contacted notified by the employee.
6. The following shall be the relief schedule for machines:

<u>#1 Machine</u>	
Machine Tender	Only for lunch but will be on call
All others	Full Relief
<u>#2 Machine</u>	
Saturator	Only for lunch but will be on call
Saturator Helper	Only for lunch but will be on call
All others	Full Relief
<u>#3 Machine</u>	
Machine Tender	No Relief
All others	Full Relief

34 Enclosed
 Certificate
 All Others

only for lunch but will be on call
the night

35. Books
 Richard Foster
 Paul Hieft
 Neal Foster
 John Hieft
 All others

No Relief except lunch on saturated felt
Only for lunch but will be on call
Only for lunch but will be on call
Only for lunch but will be on call
Full Relief

26. ~~Section~~
Covered
All others

only for items but will be on call
full notice

7. For Homeless Department (In Addition):

- (1) Outlets may be brought in before 7:00 A.M. Monday morning to prepare the plant for start up at 7:00 A.M.
- (2) Returning to Section 15 (b) Lunch Periods, and sub-paragraphs:
 - (5) ~~Temporary Transfer~~
 - (a) ~~For~~ Employees will take lunches at the periods.
 - (b) ~~Hot~~ ~~shift~~, ~~morning~~ ~~and~~, and ~~take-off~~ ~~and~~ will be relieved for lunch period.
- (3) It is agreed and understood that a temporary transfer to a lower rated job is made for the primary benefit of the Company, the employee will receive his regular rate of pay but if the temporary transfer is made mainly for the benefit of the employee, he shall receive the same rate for the new job.
- (4) The Company shall have the right to operate any machinery on Sunday and Holidays, provided no employee is scheduled or during the week to work on Sunday or Holidays as the sixth day.

~~CONFIDENTIAL~~

THE UNITED STATES OF AMERICA

EXEC 7-13-55

Robert Moore

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[UNION'S EXHIBIT 20]

AGREEMENT

This Agreement, made and entered into this 30th day of June, 1961, by and between the Distributors Association, as collective bargaining agent and on behalf of those members of the Association named in the attached Exhibit A (subject, however, to the rights of said Association members as set forth in Article IV of the Association By-Laws) and also on behalf of those firms who hereafter become Association members and adopt this Agreement as provided in Section 2 hereof; and Warehouse Union Local 6, I.L.W.U. and Warehouse Union Local 17, I.L.W.U.

classifications, house by house, covered by former agreements between the individual members of the Association and the Union.

Warehouse Union Local 17, I.L.W.U. will be recognized as the sole collective bargaining agency for all employees who may become covered by this Agreement pursuant to its adoption by firms whose warehouse employees are members of Warehouse Union Local 17, I.L.W.U.

Firms whose warehouse employees are members of either Warehouse Union Local 6, I.L.W.U. or Warehouse Union Local 17, I.L.W.U., and who may hereafter be accepted into membership by the Association, shall be privileged to become parties to this Agreement, provided the work performed by their warehouse employees is the same, or substantially the same, as that performed by member parties to this Agreement, and provided that said firms agree to the general practices in their industry under this Agreement. Any question as to work being "the same, or substantially the same" shall be adjusted and, if necessary, arbitrated as provided for in this Agreement. No disruption or stoppage of the Company's work shall be caused by the Union pending such determination.

Section 3. Union Security.

a. Union Membership. Membership in the Union on or after the thirtieth (30th) day following the beginning of employment of employees covered by this Agreement, or the effective date of this Agreement, whichever is the later, shall be required as a condition of employment. Tender of the union's periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining such membership, shall, for the purposes of this Section, be considered membership in the Union.

b. Hiring. The Employers and the Union rec-

WITNESSETH

Section 1. Definitions. "Association" means Distributors Association.

"Union" means Warehouse Union Local 6, I.L.W.U.; provided that where an employer whose employees are members of Warehouse Union Local 17, I.L.W.U. becomes a party to this Agreement as provided in Section 2, the term "Union" as applied to such employer shall mean Warehouse Union Local 17, I.L.W.U.

"Employers" means members of the Association parties to this Agreement.

"Employer" used in the singular shall be deemed to refer to a single Employer, member of the Association, and the context of the sentence in which it is used shall be deemed to refer to such Employer's own employees, or to a single employee of such Employer.

"Employees" means all workers covered by this Agreement whether male or female.

Section 2. Recognition. The Union is recognized as the sole collective bargaining agency for all employees covered by this Agreement. Such employees shall be those employed in the

3

ognize the desirability of providing continued employment in the warehouse industry, and the necessity of having available at all times a supply of competent employees with experience in the various types of work covered by this Agreement. To provide such continued employment, the Employers agree to give preference of employment to applicants who have previous experience in the industry in the San Francisco Bay Area, by reason of having been previously employed by any company signatory to this Agreement in a plant covered by this Agreement within the past two years in a classification covered by this Agreement, or men who are presently employed in plants covered by this Agreement who may become unemployed during the life of this Agreement.

Employers recognize that it has been the practice for such men to offer themselves for employment through the Union's offices and consequently, for the purpose of assuring maximum harmonious relations and in order to obtain the best qualified employees covered by this Agreement, the Employers agree that in hiring to fill all vacancies or new positions in any classifications carrying the basic minimum rate for freight handler in effect in the house involved (including general warehouse workers in the grocery group) that they will hire through the offices of the Union, provided the Union shall be able to furnish competent and experienced men for the work required. Each Employer retains the right to reject any job applicant referred by the Union, provided that in the exercise of such right there shall be no discrimination against any applicant because of race, creed, color, national origin, Union activities or lack of Union activities. In the event the offices of the Union are unable within twenty-four (24) hours to furnish competent and experienced men satisfactory to the Employer, the Employer may hire from outside

5

6 sources. For all other classifications (including order fillers and stock clerks) the Employer may apply to the Union for referral of applicants subject to the rules and regulations set forth in this Section 3 or may hire elsewhere.

The Union will maintain proper registration facilities for applicants for employment to make themselves available for job opportunities and will conduct such registration facilities without discrimination on the basis of race or color, protective employees by reason of membership in or non-membership in the Union. Selection of applicants for referral to jobs shall be on a non-discriminatory basis and shall not be based on, or in any way affected by, Union membership, by-laws, rules, regulations, constitutional provisions, or any other aspect or obligation of Union membership, policies, or requirements. From such registration facilities the Union shall first dispatch to any Employer upon his request any unemployed person who has worked previously for such Employer in the San Francisco Bay Area or for such Employer in some other area or some other Employer member of the Association in the same industry whom the requesting Employer may consider particularly suitable for the job. If no such person is specified by the Employer in requesting referrals from the Union then the Union shall dispatch persons for referral in accordance with the preference requirements set forth above.

The Union agrees that any employee secured through its offices or otherwise employed in accordance with the terms of this Section 3, and who is acceptable to his Employer, will not be withdrawn from his job because he is not a book member of the Union, or for the purpose of replacing him by someone else, and that no employee will be threatened, intimidated, or otherwise encouraged to terminate his employment.

8 Subject to the above, the Union undertakes employment within the twelve (12) consecutive months' accrual period.

Seniority shall be terminated by:

- (a) Discharge for cause;
- (b) Resignation;
- (c) Twelve (12) consecutive months of unemployment.

It is further agreed that the parties hereto will negotiate special provisions regarding the application of the seniority rule to apprentices, learners, beginners and key men in the warehouses where apprentices, learners, beginners, or key men have been exempted from the provisions of the seniority rule under pending or expired agreements.

Section 5. Discharges. The Employer shall have the right to discharge any employee for dishonesty, insubordination, drunkenness, incompetence, willful negligence, failure to perform work as required or to observe Employer's safety and house rules and regulations which must be conspicuously posted, or for engaging in strikes, individual or group slowdowns or work stoppages, or refusal to accept overtime without justifiable personal reasons, or for violating, or ordering the violation of this Agreement.

The Employer shall not discriminate against any employee because of Union membership or activities. If an employee feels he has been unjustly discharged, he shall have the right to appeal his case to the Adjustment Board. Such appeal must be filed in writing by the Union within five (5) calendar days from date of discharge and unless so filed the right of appeal is lost. In case the discharge is found to be unjustifiable by the Board, the Board may order payment for lost time or reinstatement with or without payment for lost time; but, in the event that the dispute is carried to arbitration and that such employee is found to have been properly

7 to fill all orders for the same classification of work in order of their receipt and agrees that neither the Union offices nor the procedure therein will be used or devised to discriminate against, intimidate, or coerce any individual Employer or group of Employers. Association representatives may visit such Union offices at any time to observe and examine their operation, and Association complaints concerning the operation of such Union offices and concerning violations of the above undertaking shall be adjudicated in accordance with Sections 21 and 23 hereof.

The parties to this Agreement will post in places where notices to employees and applicants for employment are customarily posted a copy of this Section 3 and any and all other provisions relating to the functioning of the hiring arrangement provided in this contract.

Section 4. Seniority. In reduction of forces due to slackness of work, the last man hired shall be the first man laid off, and in rehiring the last man laid off shall be the first man rehired until the list of former employees is exhausted.

Seniority shall be applied according to departments, work classifications, plant or warehouse, as may be determined by the Grievance Committee of the Employer involved, provided, however, that such Grievance Committee action will not be recognized unless and until written and signed notice thereof is filed with the Association and with the Union.

Seniority shall not apply to any employee until he shall have been employed for a period of three (3) months accumulated within a period of twelve (12) consecutive months.

No employee may claim seniority in more than one firm at the same time. Once acquired seniority shall be effective from the date of first discharged under the provisions of Paragraph 1 of this Section, such employee may not be ordered reinstated and no penalty may be assessed upon the Employer. There shall be no cessation of work pending decision.

Any discharged employee shall, upon request, be furnished the reason for his discharge in writing.

All complaints regarding discharges shall be given preference over any other matters pending between the parties, and a written decision shall be given within ten (10) days.

A probationary period of three (3) months shall be established for new employees. During such probationary period, an employee may be discharged for any reason which, in the opinion of his Employer, is just and sufficient; provided, however, that there shall be no discrimination against any employee because of Union membership or activities. Should any employee discharged during his probationary period believe himself to have been subjected to such discrimination, he shall have the right to appeal his case to the Adjustment Board on this issue.

Section 6. Stewards. A steward shall be provided for each warehouse, such steward to be selected by the employees on the job. Grievances which may arise and which cannot be adjusted on the job shall be reported to the Union by the steward, provided, however, in no event shall the steward or the Union order any changes and no changes shall be made except with the consent of the Employer.

Section 7. Business Agents. The business agent or qualified representative of the Union shall be allowed to visit the Employer's warehouse for the purpose of ascertaining whether or not this Agreement is being observed. This right shall be exercised reasonably. The business agent or qualified representative of the Union shall report to

- 10 the management at the office before proceeding to the plant. In the event he wishes to interview an employee, he shall be permitted to interview him privately in the office. In the event the business agent wishes to go through the plant, the Employer may send a representative to accompany him. He shall not interfere with the normal conduct of the work in the warehouse.

Section 8. Overtime. The overtime rate shall be one and one-half ($1\frac{1}{2}$) times the straight time rate, it being understood, however, that work performed by an employee on a Saturday, Sunday, or holiday in excess of eight (8) hours shall be compensated for at the rate of one and one-half ($1\frac{1}{2}$) times the overtime rate. The first eight (8) hours of work performed by employees on a Saturday, Sunday, or holiday shall be compensated for at one and one-half ($1\frac{1}{2}$) times the straight time rate.

Section 9. Holidays

Effective June 1, 1961, New Year's Day, Washington's Birthday, Memorial Day, the Fourth of July, Labor Day, Thanksgiving Day, Christmas Day, and at the option of the individual Employer each year, either Admission Day or Veterans Day, shall be paid holidays to all employees who have seniority in accordance with Section 4 of this Agreement.

Effective June 1, 1963, New Year's Day, Washington's Birthday, Memorial Day, the Fourth of July, Labor Day, Thanksgiving Day, Christmas Day, and at the option of the individual Employer each year, two of the following (i.e. Admission Day, Veterans Day, the day after Thanksgiving, and the employee's birthday) shall be paid holidays to all employees who have seniority in accordance with Section 4 of this Agreement.

All employees who qualify for pay on these

- 12 ceding June 1 and the date of the posting of such notice shall be granted another day in lieu thereof.

Any work performed on the above holidays shall be paid for at the rate of time and one-half; provided that an employee who is entitled to pay for any such holiday if not worked shall receive such holiday pay in addition to the time and one-half he is paid for working.

Section 10. Minimums. Employees ordered to report to work on any day including Saturdays, Sundays and holidays and who do so at the specified time shall receive a minimum of four (4) hours' work, or if four (4) hours' work is not furnished, a minimum of four (4) hours' pay at the straight or overtime rate, as the case may be. Employees having seniority if worked more than four (4) hours, shall receive a minimum of eight (8) hours' work or a minimum of eight (8) hours' pay in lieu thereof, except on Saturdays, Sundays, and holidays. The above minimum hour requirements shall not apply if such employees quit, voluntarily lay off, or are discharged for cause.

If an extra warehouseman is called by the Employer to report for work, and, upon reporting, finds that his services are not needed, he shall receive two (2) hours' pay. Men reporting for work who are unacceptable to the Employer shall receive no pay.

Section 11. Meal Period. If employees are worked over five (5) consecutive hours without a meal, all time in excess of five (5) hours shall be paid at one and one-half ($1\frac{1}{2}$) times the straight or overtime rate, as the case may be. At the end of a shift, if an employee is sent to dinner, when returning to work he shall receive at least two hours' pay at the overtime rate of pay.

- 11 holidays shall receive eight (8) hours of pay at straight time rates, even though no work shall be required of them; provided that an employee who fails to report for scheduled work on any of such holidays shall receive no pay; and provided also, that in order to qualify for such paid holidays the employee must report for work on both the last regular working day immediately preceding the holiday and on the first regular working day following a holiday, and unless the employee so reports he shall receive no pay for such holiday.

If any of such paid holidays falls within an employee's vacation period such employee shall receive an extra day's pay of eight (8) straight time hours.

If any of such holidays falls on a Saturday, it shall at the option of the individual Employer on each such occasion be celebrated on such Saturday or on the Friday immediately preceding. If Friday is selected all the provisions of this Section 9 shall apply to such Friday; and if Saturday is selected all the provisions of this Section 9 shall apply to such Saturday, including eight (8) hours straight time pay to employees not required to work on such Saturday and who qualify for holiday pay in accordance with this Section 9.

If the Employer has more than one establishment covered by this Contract, the options granted herein may be separately determined for each such establishment. In exercising the option for the selection of two of the four optional holidays the Employer shall post notice of the two optional holidays selected on or before August 15 of each year commencing August 15, 1963; provided that if one of the two optional holidays selected is the employee's birthday, an employee whose birthday fell between the pre-

- 13 **Section 12. Handicapped Persons.** A person whose earning capacity is or shall become limited because of age, physical or mental handicap, or other infirmities may be employed or placed on light work at a wage below the minimum established by this Agreement, subject to the approval in each instance of the Employer and the Union.

Section 13. No Discrimination. There shall be no discrimination of any kind because of race, creed, color, national origin, or Union activities against any member of the Union by the Employer or any one employed by the Employer.

Section 14. Employer and Union Responsibility. The Union agrees not to engage in any strikes or stoppages of work during the term of this Agreement, and the Employer agrees not to engage in any lockout during the term of this Agreement.

Employees shall not refuse to handle any merchandise, except that in the event of a strike by members of the Union against an employer not a member of the Association, employees shall not be required to handle merchandise destined to or shipped from such struck warehouse, provided such merchandise is not ordinarily handled by the Employer-member of this Association.

Any action of the employees leaving jobs for their own protection in cases of a legally declared strike by some other union directly working on the job, if such strike is sanctioned and approved by the labor body or council having jurisdiction, shall not constitute a violation of this Agreement.

The Union agrees that it will not support strikes or picket lines by unions not parties to this Agreement unless such union's right to organize peacefully has been interfered with by the Employer, or unless it has been denied the means of a peaceful settlement of its dispute.

- 14 The Union and its representatives agree that they will enforce full compliance with all terms and provisions of the Master Agreement on the part of members of the Union.

The Union, its members and representatives, agree that it and they will not engage in a strike, sit-down, sanction, or support any strike, slowdown, stoppage of work, curtailment of production, concerted refusal of overtime work, refusal to operate designated equipment (provided such equipment is safe and sound) or to perform customary duties or to report to work without justifiable personal reasons.

Neither the Union nor any representatives thereof shall engage in any action for the purpose of effecting changes in the existing practices of the individual companies to this Agreement, nor to effect a change of personnel or operations of management or of employees not covered by the Agreement.

The Union will immediately investigate any report of such violations as are set forth above and in the event that it finds such action taking place, the Union and its representatives will take immediate steps to halt all such activity.

Failing agreement or any alleged violation of the above understanding, it is recognized that the question may, at the option of either party, be referred for arbitration under Sections 21 and 23 of the Master Contract.

Section 35. Wages, Hours and Vacations.

(a) "Minimum basic wage for men" is defined as standard wage for freight handlers.

The minimum basic wage hereinabove defined shall be:

Effective June 1, 1961	\$2.595 per hour
Effective June 1, 1962	\$2.675 per hour
Effective June 1, 1963	\$2.775 per hour

- 16 Order Fillers (Full Case—Grocery Industry):

Effective June 1, 1961, starting rate \$2.595 per hour; and after six (6) months experience in the individual house \$2.645 per hour.

Effective June 1, 1962, starting rate \$2.675 per hour; and after six (6) months experience in the individual house \$2.725 per hour.

Effective June 1, 1963, starting rate \$2.775 per hour; and after six (6) months experience in the individual house \$2.825 per hour.

Order Fillers (Full Case—Other than Grocery):

Effective June 1, 1961, starting rate \$2.595 per hour; and after six (6) months experience in the individual house \$2.62 per hour.

Effective June 1, 1962, starting rate \$2.675 per hour; and after six (6) months experience in the individual house \$2.70 per hour.

Effective June 1, 1963, starting rate \$2.775 per hour; and after six (6) months experience in the individual house \$2.80 per hour.

The minimum rates for Working Foremen and Working Foreladies shall be as follows:

Working Foreman A—25c per hour above the basic minimum rate for freight handlers in the house involved.

Working Foreman B—15c per hour above the basic minimum rate for freight handlers in the house involved.

- 15 Standard minimum rates for the following additional classifications shall be uniform for all employees covered by this Agreement:

Shipping and/or Receiving Clerks:

Effective June 1, 1961	\$2.795 per hour
Effective June 1, 1962	\$2.875 per hour
Effective June 1, 1963	\$2.975 per hour

Checkers:

Effective June 1, 1961	\$2.67 per hour
Effective June 1, 1962	\$2.75 per hour
Effective June 1, 1963	\$2.85 per hour

Packers:

Effective June 1, 1961	\$2.595 per hour
Effective June 1, 1962	\$2.675 per hour
Effective June 1, 1963	\$2.775 per hour

Order Fillers and Stock Clerks (Open Stock):

Effective June 1, 1961,

starting rate:	\$2.52 per hour
after four (4) months	\$2.55 per hour
after eight (8) months	\$2.595 per hour
after twelve (12) months	\$2.62 per hour

Effective June 1, 1962,

starting rate:	\$2.60 per hour
after four (4) months	\$2.63 per hour
after eight (8) months	\$2.675 per hour
after twelve (12) months	\$2.70 per hour

Effective June 1, 1963,

starting rate:	\$2.70 per hour
after four (4) months	\$2.73 per hour
after eight (8) months	\$2.775 per hour
after twelve (12) months	\$2.80 per hour

- 17 Working Forelady A—25c per hour above the basic minimum rate for women in the house involved.

Working Forelady B—15c per hour above the basic minimum rate for women in the house involved.

The minimum rate for operators of fork-type lift jacks used in high piling shall be Ten Cents (10¢) per hour above the basic minimum rate for freight handlers in effect in the house involved.

The minimum rate for operators of power-propelled high lift platform or fork-type lead around stackers (guided but not ridden by operator) used in high piling, shall be Five Cents (5¢) per hour above the basic minimum rate for freight handlers in effect in the house involved.

Existing differentials shall be maintained for other work classifications for men upward and downward from the minimum basic wage.

Women who on May 31, 1960 were employees of an establishment covered by this Agreement (including those women employees who had seniority, but were on layoff as of May 31, 1960), in the classifications paid the minimum basic wage for women under the former Master Agreement, shall, so long as they continue in the employ of the same establishment, receive the following rates:

Effective June 1, 1961	\$2.40 per hour
Effective June 1, 1962	\$2.46 per hour
Effective June 1, 1963	\$2.54 per hour

Women assigned to classifications paid the basic minimum wage for women under the former Master Agreement who, on or after June 1, 1960, became or become new employees of an

- 18 establishment covered by this Agreement shall be paid in accordance with the following:

Effective June 1, 1961,
 starting rate: \$2.19 per hour
 after six (6) months \$2.295 per hour
 after twelve (12) months \$2.40 per hour

Effective June 1, 1962,
 starting rate: \$2.25 per hour
 after six (6) months \$2.355 per hour
 after twelve (12) months \$2.46 per hour

Effective June 1, 1963,
 starting rate: \$2.33 per hour
 after six (6) months \$2.435 per hour
 after twelve (12) months \$2.54 per hour

Differentials for other work classifications for women upward and downward which existed under the former Master Agreement shall be maintained.

With respect to those firms having provisions for a probationary wage rate for women under the former Master Agreement, said firms may place new women employees on such probationary wage rate for a period of not more than thirty (30) days, unless said new women employees establish that they have had experience for the type of work they are employed for, in which case they shall receive the regular rate of pay provided for herein.

The beginner's rate and rate of progression for beginners in hardware shall be the same as those for order fillers and stock clerks as set forth above; provided however, that employers in the hardware group may continue to apply the provisions of existing and expired agreements permitting the exclusion of 50% of such beginners from the seniority and layoff provisions of this and previous agreements.

- 20 8. The employees to be affected are given at least seven (7) days advance notice of the change.

An employee required by his Employer to take a physical examination during time he would otherwise be working on his job, shall not have his wages deducted from the time so lost.

(c) Shift operations are exempted from the provisions of subsection (b) hereof and from the provisions of Section 8 herein relating to Saturdays, Sundays and holidays only as follows:

1. Employers now conducting shift operations, or who have previously conducted shift operations, may continue to do so, or may reinstate their shifts, change their shifts, or establish new shifts, in accordance with the plans and practices now in effect in such plants or which were in effect when the shifts last operated, provided that the minimum differential on any second or swing shift shall be 8¢ per hour and the minimum differential on any third or graveyard shift shall be 13¢ per hour.

2. Employers not now conducting shift operations and who have not previously done so shall have the right to establish shifts on such schedules as they deem necessary to meet their needs, provided, however, that for any shift commencing between the hours of 9:00 P.M. and 5:59 A.M., employees shall receive a premium of 13¢ per hour, and for any shift commencing between the hours of 1:00 P.M. and 8:59 P.M., employees shall receive a premium of 8¢ per hour. On either an 8¢ or 13¢ shift as herein defined employees will be allowed a one-half (½) hour lunch period on company time. No shift schedule of less than three (3) consecutive months' duration shall be recognized as a shift operation within the meaning of this contract, and an operation of less than fifteen (15) hours per day shall not be deemed a shift operation.

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(b) Work performed in excess of forty (40) hours in one (1) week, Monday to Friday, inclusive, shall constitute overtime. Work performed in excess of eight (8) consecutive hours in one (1) day (exclusive of lunch period) shall constitute overtime. The present starting and quitting times of each Employer, as now in effect, shall continue under the terms of this Agreement, and for work performed prior to such regular starting times, or after such quitting times, overtime shall be paid; provided, however, if the Employer's operation requires a change in schedule (other than temporary) such new schedule will be worked out by arrangement between the Union and the Employer; and provided further that the agreement of the Union is not required if all of the following conditions are met:

1. The proposed change in starting time is less than one hour.
2. The proposed change in quitting time is less than one hour.
3. The scheduled meal period after the change is not less than thirty minutes nor more than one hour.
4. If a day shift is involved, the new starting time is between 7:00 A.M. and 8:00 A.M. inclusive, and the new quitting time is between 3:30 P.M. and 5:00 P.M.
5. If a second or swing shift is involved, the new starting time is between 3:30 P.M. and 5:00 P.M., inclusive, and the new quitting time is between 11:30 P.M. and 1:00 A.M.
6. If a third or graveyard shift is involved, the new starting time is between 11:00 P.M. and 1:00 A.M. inclusive, and the new quitting time is between 6:30 A.M. and 8:00 A.M.
7. The new schedule is effective for at least thirty calendar days, and

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(d) Vacations. Every employee who on the most recent anniversary date of his employment shall have been in the service of his Employer for a period of one (1) year or more, and shall have worked a minimum of 1500 straight time hours within the 12 months period immediately preceding such anniversary date, shall be entitled to a vacation as follows:

Effective June 1, 1961:

One (1) week of vacation with pay if he shall have been in the service of his Employer for a period of one year or more but less than two years prior to such anniversary date; or if he shall have been in the service of his Employer for a period of three or more years and has worked a minimum of 900 straight time hours within the 12 months period immediately preceding his most recent anniversary date but has failed to qualify for two weeks of vacation because of his failure to work the minimum of 1500 straight time hours;

Two (2) weeks vacation with pay if he shall have been in the service of his Employer for a period of two years or more but less than ten years prior to such anniversary date;

Three (3) weeks vacation with pay if he shall have been in the service of his Employer for a period of ten years or more prior to such anniversary date, provided, however, that the Employer may require that no more than two weeks of such three week vacation be taken at any one time.

Effective January 1, 1962:

One (1) week of vacation with pay if he shall have been in the service of his Employer for a period of one year or more but less than two years prior to such anniversary date; or if he shall have been in the service of his Employer for a period of three or more years and has

22 worked a minimum of 900 straight time hours within the 12 months period immediately preceding his most recent anniversary date but has failed to qualify for two weeks of vacation because of his failure to work the minimum of 1500 straight time hours.

Two (2) weeks vacation with pay if he shall have been in the service of his Employer for a period of two years or more but less than ten years prior to such anniversary date.

Three (3) weeks vacation with pay if he shall have been in the service of his Employer for a period of ten years or more but less than twenty years prior to such anniversary date, provided, however, that the Employer may require that no more than two weeks of such three week vacation be taken at any one time.

Four (4) weeks vacation with pay if he shall have been in the service of his Employer for a period of twenty years or more prior to such anniversary date, provided, however, that the Employer may require that no more than two weeks of such four week vacation be taken at any one time.

Effective January 1, 1963:

One (1) week of vacation with pay if he shall have been in the service of his Employer for a period of one year or more but less than two years prior to such anniversary date; or if he shall have been in the service of his Employer for a period of three or more years and has worked a minimum of 900 straight time hours within the 12 months period immediately preceding his most recent anniversary date but has failed to qualify for two weeks of vacation because of his failure to work the minimum of 1500 straight time hours.

24 Two (2) weeks vacation with pay if he shall have been in the service of his Employer for a period of two years or more but less than ten years prior to such anniversary date; or if he shall have been in the service of his Employer for a period of three or more years and has worked a minimum of 900 straight time hours within the 12 months period immediately preceding his most recent anniversary date but has failed to qualify for two weeks of vacation because of his failure to work the minimum of 1500 straight time hours.

An employee who on his most recent anniversary date has qualified for a vacation by working the requisite minimum of straight time hours during the preceding twelve months but whose employment is terminated prior to taking such vacation shall be entitled to pay in lieu thereof. An employee who fails to work the requisite minimum number of hours during the twelve months preceding his most recent anniversary date or who is not in the employ of his Employer on his anniversary date shall not qualify for a vacation or for pay in lieu thereof, provided, however, that effective on the following date, i.e.:

Effective January 1, 1963, there shall be a prororation of vacation benefits for each employee who has had three years of continuous employment with his Employer, such prororation to be at the rate of one half-day of vacation for each 173 straight time hours worked since the employee's most recent anniversary date.

Employees with seven or more years of service but less than ten years of service will be entitled to a three week vacation only upon reaching the first anniversary date of their employment which occurs on or after January 1, 1963, provided that they otherwise qualify for such vacation; and employees with twenty years or more will be entitled to a four week vacation only upon reaching the first anniversary date of their employment which occurs on or after January 1, 1962, provided that they otherwise qualify for such vacation.

Similarly an employee will be entitled to prororation of vacation only after the first anniversary

23 have been in the service of his Employer for a period of two years or more but less than seven years prior to such anniversary date.

Three (3) weeks vacation with pay if he shall have been in the service of his Employer for a period of seven years or more but less than twenty years prior to such anniversary date, provided, however, that the Employer may require that no more than two weeks of such three week vacation be taken at any one time.

Four (4) weeks vacation with pay if he shall have been in the service of his Employer for a period of twenty years or more prior to such anniversary date, provided, however, that the Employer may require that no more than two weeks of such four week vacation be taken at any one time.

In case of industrial accident for which the employee is receiving Workmen's Compensation benefits, up to 300 hours of absence from regularly scheduled employment may be counted toward qualifying for such minimum working time of 1500 straight time hours; and up to 150 hours of absence from regularly scheduled employment may be counted toward qualifying for such minimum working time of 900 straight time hours.

For the purposes of this sub-section (d) years of service shall mean years of unbroken seniority with his Employer which shall in no event be calculated from a date prior to the time the employee actually commenced working for such Employer.

25 In computing straight time hours as that term is used in this subsection (d) and in Section 20(b) (Life Insurance) all hours worked by the employee for his Employer shall be counted, but each premium or overtime hour worked shall count only as one straight time hour, and effective date of his employment which occurs on or after January 1, 1963.

For the purposes of this sub-section (d), one (1) week's pay shall mean straight time pay for the regularly scheduled work week at the time the vacation is taken but in no event more than forty-eight (48) times the straight time hourly rate of pay, nor less than forty (40) times the straight time hourly rate of pay.

Preference of vacation date shall be given to employees according to their seniority rating as reasonably as possible. Employees shall be given, insofar as practical, two (2) weeks' notice of the date upon which their vacation period will commence.

Section 16. Efficient Operations. The Union agrees to investigate with the Association, and on the merits, all cases of alleged failure of employees to carry on efficient operations and give "a day's work for a day's pay," and will give its full support to insure to each Employer a fair and efficient standard of work from his employees.

Section 17. Existing Agreements.

(a) This Agreement shall supersede all existing agreements between the Union and members of the Association, parties to this Agreement. (It is not the intent of this paragraph to discontinue practices relating to working conditions on the job which have been established by agreement between the Employer and representatives of the Union, acting on behalf of the employees on the job.)

(b) No changes in this Agreement or interpretations thereof (except interpretations resulting from adjustment board or arbitration proceedings hereunder) will be recognized unless agreed to by the Association and the Union. All other grievances may be finally settled at the

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office in the United States. An employee who is absent from the Employer's service shall be granted a leave of absence thereafter without loss of seniority, entitling him upon reinstatement from such office to reinstatement consistent with his seniority; provided, however, that such leave of absence shall not extend beyond the term of this contract, unless extended by mutual consent.

Section 19. Bulletin Boards. The Employer shall provide a reasonable number of bulletin boards in places reasonably accessible to the employees covered by this Agreement for the purpose of posting notices of official Union business, such as times and places of meetings.

Section 20.

(a) **Sick Benefit Allowance.** Every employee covered by this Agreement who has been continuously employed by his Employer for a period of at least one (1) year shall thereafter be entitled to five (5) days (forty (40) straight time hours) sick leave with pay per year. A doctor's certificate or other reasonable proof of illness may be required by the Employer. Such sick leave with pay shall be applicable only in cases of bona fide illness or accident and shall be paid in the following manner:

Effective June 1, 1961:

First work day's absence, no pay; provided, however, that the sick benefit allowance for bona fide illness or accident shall commence with the first work day's absence in the event that the employee is hospitalized on such first day.

Second and third consecutive work days' absences, one-half pay each day.

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period during which sick benefit allowances are paid, the sum of the two shall not exceed the sick benefit payable for said period.

(b) **Life Insurance.** Every employee who on the anniversary date of his employment shall have been in the service of his Employer for a period of one year and who during such year shall have worked a minimum of 1500 straight time hours (see Section 15(d) for method of computing 1500 hours requirement) shall be entitled to be covered by a \$1000. term life insurance policy with a non-occupational accidental death and dismemberment rider so long as this Agreement is in effect and he remains on his company's active payroll with unbroken seniority; provided, however, that in any instance in which an employee is both disabled and not working on the day he would have become insured, the effective date of such employee's insurance shall be deferred until he returns to active work. The cost of such life insurance shall be borne entirely by the Employer. The Employer shall be under no obligation to furnish such insurance for the employee after his employment is terminated or while the employee is laid off, or is on leave of absence, provided, however, that a covered employee who is on leave of absence because of illness and who has promptly notified his Employer of his illness will be entitled to such insurance coverage for the first three (3) months of his absence from work on account of such illness. Any dividends or other reduction in the cost of such insurance shall be returned to the Employer and the employee shall have no interest therein.

Where any employee who would otherwise be eligible for such insurance is participating (or may hereafter participate) in any life insurance program in an amount equal to or greater than that required hereunder, or in any disability

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benefit plan, such employee shall not be eligible for such insurance. If an employee is hospitalized on such first day.

Succeeding work days' absences, full pay until sick benefit allowance is used up.

If an employee is absent from work on the day before any of the holidays listed in Section 9 or the day after any of such holidays, due to bona fide illness or accident, said holiday shall be considered a work day's absence within the meaning of this Section 20(a).

For the purposes of this Section 20(a), full pay and one-half pay shall mean pay for the regular daily schedule of working hours, for those days which the employee would have worked had the disability not occurred, calculated at straight time or one-half such amount. The waiting periods herein provided before full pay commences shall apply for each illness or accident in case the sick benefit allowance has not been used up in previous illnesses.

Sick benefits are not cumulative from year to year nor convertible to cash bonus, provided, that an employee with three (3) or more years of seniority with his Employer may accumulate unused sick leave for two years provided that the maximum sick leave in any year (including sick leave accumulated from the prior years) shall not exceed 120 hours.

In industrial injury cases, Workmen's Compensation and sick benefit allowance shall be paid separately, but in the event Workmen's Compensation payments cover all or part of the

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plan which is not required by law, or by the terms of this Agreement, to which his Employer is contributing in whole or in part to the cost thereof, such employee shall be deemed to have waived the benefits of the insurance provided in this Section unless he gives written notice to his Employer that he waives and resigns from such other plan in its entirety. The Employer shall within 30 days after receipt of such notice place such employee under the \$1000. life insurance coverage provided in this Section.

Except with regard to the \$1000. term life insurance provided herein, and the hospital-medical care program of sub-section (c) below, and the Pension Agreement between the parties hereto, the initiation, discontinuance, revision and administration of any insurance, medical, hospital, surgical, retirement benefit, health or disability plan, shall (except as required by law or by the specific terms of the plan or insurance itself) be entirely voluntary on the part of the Employer and shall be the sole prerogative of management, and employees covered by and participating in such plans shall be bound by the requirements thereof.

(c) **Hospital-Medical Care for Employees and their Dependents.** Effective July 1, 1961 and continuing through June 30, 1964, the Employer shall pay \$16.50 per month for eligible employees and their dependents as the monthly premium for either of two distinct plans for hospital-medical care for employees and their dependents, between which the employees may choose. One plan (Plan A) shall be such Kaiser Foundation Health Plan as may be selected by the Union within the financial limits of the monthly contribution of \$16.50, and the other (Plan B) shall be a free choice plan under which the employee will be able to select his own physician or surgeon and his own hospital.

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The carrier of Plan B shall be jointly selected by the Association and the Union. The benefits of Plan B within the cost limit of \$16.50 shall be jointly negotiated. There is to be no increase in the \$16.50 monthly contribution during the term of this Agreement.

Any employee employed thirty (30) continuous calendar days by the twentieth (20th) day of any month shall be eligible for and be covered by the hospital-medical program beginning with the first day of the following month; provided, however, that if the employee has selected Plan B, then in any instance in which such employee is absent from active work because he is hospitalized, his hospital-medical insurance would otherwise take effect the effective date of his insurance shall be deferred until he returns to active work, provided further that as to any employee who has selected Plan B his dependents who are hospitalized on the day they would become covered will not be covered until released from hospital care. Such coverage shall continue throughout the term of the Agreement until the first day of the calendar month following termination or lay off. However, if an employee has three or more years seniority at the time of lay off he shall be granted one additional month of hospital-medical care coverage under the plan which is in effect as to him at the time of lay off.

Employees who are not eligible for coverage under the preceding paragraph shall for the purposes of this subsection (c) be called "casual employees". In order to provide hospital-medical care coverage for such casual employees, the Employers will pay a stipulated sum for each straight time hour worked by such casual employees for the period commencing July 1, 1961, and ending June 30, 1964. Such agreed sum per hour shall be computed to the nearest one-fourth (1/4) cent by dividing by 173.3 the

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in the industry in this area and the number of hours which he has worked and for which payment has been made into the fund.

The fund collected by the Association may be combined with a like fund collected from non-Association employers for the purpose of attaining the foregoing objectives, provided that monies paid to the Kaiser Foundation Health Plan, Inc. by such employers with respect to such casuals shall be at rates not less than the same rate as is paid by the Association members for each hour worked.

Kaiser Foundation Health Plan, Inc. will have an administrative charge for this casual program which will be deducted from the contributions made by the Association and other employers toward the casual fund.

Duplicate coverage will be avoided both on Plan A and Plan B and the Employers may make suitable arrangements with the carriers on both Plan A and Plan B for the avoidance of such duplicate coverage.

Prior to August 15, 1961, each employee eligible for coverage under the agreement shall make his election as to whether he desires Plan A or Plan B. He shall have a like choice on August 1, 1962, and August 1, 1963, any change to be effective September 1 of the current year. Employees who become eligible after August 15, 1961, shall make their choice on becoming eligible and may have a like choice on August 1, 1962 and August 1, 1963.

The Employer's contribution for hospital-medical coverage shall be \$16.50 each month for eligible employees regardless of whether the employee has selected Plan A or Plan B and regardless of the comparative cost of the two plans.

Employers having an existing hospital-medical

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monthly contribution required for regular coverage. Such hourly sum shall be collected by the Association from its members each month.

The Association and the Union shall from time to time, at such intervals as they shall mutually determine, establish or revise eligibility requirements for coverage of casual employees on the basis of the fund then available. Such eligibility requirements shall be so established as to make available to the agreed list of eligible casual employees the same coverage as that provided employees who are eligible for coverage under Plan A. Casual employees shall be entitled to coverage under the hospital-medical care program only if they are accepted and certified by the parties as eligible for such coverage and are properly enrolled. Such employees are entitled only to Plan A coverage and shall not have the right to elect Plan B, except that in those geographical areas where Plan A is not available such employees are entitled only to Plan B.

The Employer may if he wishes place a casual employee under regular monthly coverage upon commencement of employment or prior to his eligibility date for regular monthly coverage, in which event the required hourly contributions for such casual employee shall cease upon the date on which such regular coverage is made effective for the employee.

The Association and the Union will agree upon the qualifications required of employees who are to receive hospital-medical coverage from the fund accumulated by the Association from the payments made by Employers for hours worked by employees who are not eligible for regular monthly coverage. In establishing the eligibility for such "casual employees" the Association and the Union shall consider particularly the length of time which the employee has spent

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plan which they continued in effect under the prior expired Master Agreement may if they choose continue such plan in the same manner as they did under the prior expired Master Agreement in lieu of the hospital-medical plan set forth above; and may also discontinue such plan if they so elect, in which event they shall provide hospital-medical care as required by this Section 20(c).

Section 21. Adjustment Board. Immediately upon the execution of this Agreement, an adjustment board, consisting of three (3) members representing each of the parties hereto, shall be set up for the purpose of hearing and deciding grievances of members of the Union and of the Employers which arise and are presented during the term of this Contract and which concern the interpretation or application of any of the terms or provisions of this Agreement, or the terms or provisions of written agreements and addenda supplementary to this Agreement. In case of a deadlock on any matter, the issue in dispute shall be submitted to arbitration in accordance with the provisions of Section 23 hereof. Pending final disposition of any matter, work shall be continued in an orderly manner, in accordance with the conditions which existed prior to the time the dispute arose.

Section 22. Grievance Committee. A committee shall be appointed in the warehouse of each Employer to consist of not more than three (3) representatives designated by the Employer and not more than three (3) employees of the Employer designated by the employees. This committee shall take up all grievances or disputes concerning employment under the terms and provisions of this Agreement and written agreements and addenda supplementary hereto. In the event they are unable to agree on any matter submitted to them, the question or questions in

- 34 dispute shall be referred to the Adjustment Board to be disposed of in accordance with provisions of Section 21 hereof.

All complaints involving or concerning payment of compensation shall be filed in writing and no adjustments shall be retroactive for more than sixty (60) days in such cases, but only complaints involving or concerning payment or compensation under the terms of this Agreement and written agreements and addenda supplementary hereto may be considered by the grievance committee. New or reclassified employees shall receive a classification slip.

Section 23. Arbitration. In the event that the parties hereto are unable to reach a mutually satisfactory accord on any question which arises and is presented during the term of this Agreement concerning the interpretation or application of any of the terms or provisions of this Agreement and discharge cases, or the terms or provisions of written agreements and addenda supplementary to this Agreement by the manner and methods elsewhere in this Agreement provided, such questions shall be submitted to a board of arbitration as follows:

Upon the signing of this Agreement there shall be established a board of arbitration consisting of two (2) representatives of the Union and two (2) representatives of the Association. There shall then be set up a permanent panel of five (5) impartial chairmen, one (1) of whom shall be selected by lot for such matters as may be referred to arbitration and such person to act as chairman of the Board.

Within a period of fifteen (15) days following the signing of this Agreement, the parties hereto shall mutually agree to the persons to constitute the panel of five (5). If such agreement cannot

- 36 unions' bargaining units within the establishments represented by such associations; (2) any displacement of workers represented by the unions which may be caused by such automation; (3) the possibility of training or retraining such displaced workers for other employment; and (4) the availability of money from Federal, State, or Local governments for such training or retraining.

The establishment and operation of the committee shall be without cost to the associations, the employers or the unions, except that such clerical expense as may be jointly authorized by the employer and union members of the committee shall be shared equally between the associations and the unions represented on the committee.

The establishment and operation of the committee shall be on a good faith basis and disputes and grievances which may arise therefrom or in connection therewith shall not be subject to the grievance procedure of the collective bargaining agreements between the parties nor shall any economic action be taken or threatened by any of the parties, their respective members, or by any members of the committee respecting any action or lack of action by the committee.

The first report of the committee shall be made to the participating associations and unions not later than June 1, 1962.

Section 25.

(a) Duration of Agreement. This Agreement shall be effective June 1, 1961, except for those provisions of the Agreement which have been assigned other effective dates as hereinabove set forth and shall remain in full force and effect to and including the 31st day of May, 1964, and shall continue thereafter from year to year unless at least sixty (60) days prior to the first day of

- 35 be reached within said period, then _____

_____ shall be asked to submit a list of nine (9) names from which each of the parties shall have the right to delete two (2) names and the remaining five (5) names shall constitute the panel of impartial chairmen.

It is understood and agreed, however, that proposals to add to or change this Agreement or written agreements or addenda supplementary hereto shall not be arbitrable and that no proposal to modify, amend or terminate this Agreement, nor any matter or subject arising out of or in connection with such proposal, may be referred for arbitration under this Section; and that the board of arbitration shall have no power to amend or modify this Agreement or any written agreements or addenda supplementary hereto or to establish any new terms or conditions of the same.

Section 24. Joint Automation Committee. There shall be established a Joint Automation Committee with equal representation of the I.L.W.U. and I.B.T. Warehouse Union locals and the Distributor Association and San Francisco Employers Council. Each party is to select its own representatives on such committee. The size of the committee and its procedure for operating shall be determined by mutual agreement of the foregoing unions and associations.

During the term of the Contract, the committee shall study and report on:

- (1) The impact of automation, if any, on the

- 37 June, 1964, or to the first day of June of any subsequent year either party shall file written notice with the other of its desire, to amend, modify, or terminate this Agreement. There shall be no opening of any kind or for any purpose during the three year term of this Agreement.

(b) Scope of Agreement. Except as otherwise specifically provided herein, this Agreement fully and completely incorporates the understanding of the parties hereto and constitutes the sole and entire agreement between the parties on any and all matters subject to collective bargaining. Neither party shall, during the term of this Agreement, demand any change therein nor shall either party be required to bargain with respect to any matter. Without limiting the generality of the above, both parties, in their own behalf and on behalf of their respective members bound hereby, waive any right to demand of the other any negotiating, bargaining, or change during the life of this Agreement with respect to pensions, retirement, health and welfare, annuity or insurance plans, or respecting any question of wages, hours, or any other terms or conditions of employment; provided that nothing herein shall prohibit the parties from changing the terms of this contract by mutual agreement.

(c) Separability of Provisions. Should any section, clause or provisions of this Agreement be declared illegal by final judgment of a court of competent jurisdiction, such invalidation of such section, clause or provisions shall not invalidate the remaining portions hereof, and such remaining portions shall remain in full force and effect for the duration of this Agreement.

(d) Unlawful Action Not Required. The parties agree that neither will willfully require the other or their respective members bound hereby to do or perform any act prohibited by law.

38 IN WITNESS WHEREOF the parties hereto have executed this Agreement this 30th day of June, 1961.

WAREHOUSE UNION LOCAL 6, ILWU.

/s/ Charles D. Mc
/s/ Richard Lyden

WAREHOUSE UNION LOCAL 17, ILWU.

/s/ Frank E. Thompson

**INTERNATIONAL LONGSHOREMEN'S
AND WAREHOUSEMEN'S UNION**

/s/ Louis Goldstein

DISTRIBUTORS ASSOCIATION

/s/ J. Hart Clinton

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EXHIBIT A

"Locals 6 and 17, ILWU Warehouse Group"

Acme Export Packing Co.
Pier 31
San Francisco 7, California

Acme Paper Company
250 Tennessee Street
San Francisco 7, California

Alpha Distributing Co.
1701 Montgomery Street
San Francisco 11, California

American Import Co.
1107 Mission Street
San Francisco 3, California

American Thread Co.
50 - 3rd Street
San Francisco 3, California

Andersen-Smith Milling Co.
125 Jefferson Street
San Francisco 11, California

Baker & Hamilton
700 - 7th Street
San Francisco 7, California
60 King Street
San Francisco 7, California
Third and Market Streets
Oakland, California

Baker Steel & Tube Co.
1215 - 22nd Street
San Francisco 22, California

Bauer Cooperage Co. of California, Inc.
2215 Keith Street
San Francisco 21, California

J. H. Baxter & Co.
2201 Clement Street
Alameda, California

Bay Cities Wholesale Hardware Co., Inc.
1751 Adrian Road
Burlingame, California

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M. L. Chanon Co.
510 Howard Street
San Francisco 3, California

The Clorox Co.
850 - 12nd Avenue
Oakland, California

Coffin-Redington Co.
2211 Frederick Street
Oakland, California
175 Sylvester Street
South San Francisco, California

Commercial Paper Corp.
48 Jackson Street
San Francisco 11, California

Construction Device Co.
820 Bryant Street
San Francisco 3, California

Curtis & Tompkins, Ltd.
235 Front Street
San Francisco 11, California

Decca Distributing Co.
525 Sixth Street
San Francisco 3, California

John Deere Co.
631 Broadway Street
San Francisco 7, California

Dennis Wholesale Grocery
1252 Tenth Avenue
San Francisco 22, California

Dewey & Almy Chemical Division,
W. R. Grace & Co.
2110 Davis Street
San Francisco, California

Diamond Alkali Company
1200 - 66th Street
Emeryville, California

Distributors Warehouse Co.
25 Polson Street
San Francisco 3, California

Dohrmann Commercial Co.
418 Townsend Street
San Francisco 7, California

Dohrmann Hotel Supply Co.
972 Mission Street
San Francisco 3, California

Derward & Sons

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Bernick Extract Co.
400 - 2nd Street
San Francisco 7, California

Best Foods, Division of
Corn Products Co.
1914 Webster Street
Alameda, California

Blake, Moffitt & Towne
200 - 5th Street
San Francisco 3, California
601 N. Tenth Street
Sacramento, California
21st and Union Streets
Oakland, California

Blue Ribbon Coffee Co.
Sullivan and N. Tenth Streets
San Francisco, California

George R. Doermann Steel Co.
25 Ninth Street
Oakland, California

Bridge, Beach & Co.
22nd and Mission Streets
San Francisco, California

Chas. Brown Hotel Supply
712 Mission Street
San Francisco 3, California

L. H. Dutcher Co.
15th and Vermont Streets
San Francisco, California

Cardinal Chemical Co.
Green and Sansome Streets
San Francisco, California

Carpenter Paper Company
201 Polson Street
San Francisco 3, California

A. M. Castle & Co.
800 Indiana Street
San Francisco 7, California
717 Potter Street
Berkeley, California

George W. Caswell Co.
612 Harrison Street
San Francisco 7, California

Central Warehouse and Drayage Co.
1215 - 6th Street
San Francisco 7, California
321 - 2nd Street

BEST COPY
from the original

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Duff-Norton Co.
1616 Howard Street
San Francisco 2, California

Dunham, Carrigan & Hayden Co.
2 Kansas Street
San Francisco 2, California
16th and Rhode Island
San Francisco, California

Durkee Famous Foods.
Division of the Glidden Co.
2900 - 5th Street
Berkeley, California

Duro-Test Corporation
1150 12th Avenue
San Francisco 24, California

Encinal Terminals
Foot of Jay Street
Alameda, California

Eng-Snell Co.
1655 Howard Street
San Francisco 12, California

Farmers' Rice Growers Cooperative
Stone Blvd. and Harbor Blvd.
West Sacramento, California

Fibreboard Paper Products Corp.
Harbor Blvd. and Bayshore
Redwood City, California
Foot of 5th Street
Emeryville, California

Firestone Tire & Rubber Co.
101 Harrison Street
San Francisco 7, California

J. A. Foiger & Co.
101 Howard Street
San Francisco 2, California
229 Littlefield Avenue
South San Francisco, California

E. Fomil and Sons
20 Hyde Street
San Francisco 3, California

Foremost Food & Chemical Co.
(Plastics Division)
1401 Middle Harbor Road
Oakland, California
(El Dorado Division)
1401 Middle Harbor Road
Oakland, California

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Herb-Verdi Co.
271 Brannan Street
San Francisco 7, California

Hershey Chocolate Corp.
300 Second Street
San Francisco 7, California

Hexol, Inc.
1500 - 17th Street
San Francisco 7, California

Incandescent Supply Co.
617 Mission Street
San Francisco 3, California
1800 - 24th Street
Sacramento, California
2500 Broadway
Oakland, California

Jay Vee Stores of California, Inc.
1171 Mission Street
San Francisco 3, California

Kelly Springfield Tire Co.
200 Napoleon Street
San Francisco 24, California

Lady's Choice Foods Co.
111 San Leandro Blvd.
San Leandro, California

Larus & Bro. Co., Inc.
271 Brannan Street
San Francisco 7, California

Libby, McNeill & Libby
11th and Terminal Streets
Oakland, California

Lyons-Magnus, Inc.
2515 - 16th Street
San Francisco 3, California

McClintock-Stern Co., Inc.
305 Clay Street
San Francisco 11, California

McCormick & Co.
(A. Schlitz Division)
301 Second Street
San Francisco 7, California

Bert McDowell Co.
54th and Franklin Road
Sacramento, California

McGuire Chemical Co.
723 Terminal Street
Oakland, California

43

Foucar, Ray & Simon
175 Townsend Street
San Francisco 7, California

B. R. Funsten Co.
204 Seventh Street
San Francisco 2, California

Gibraltar Warehouses
1200 Battery Street
San Francisco 11, California
1250 Sanson Street
San Francisco 11, California
200 Brannan Street
San Francisco 7, California

Goodyear Rubber Co.
200 Third Street
San Francisco 7, California
525 Minnesota Street
San Francisco 7, California

Greene's Wholesale Co.
600 Minnesota Street
San Francisco 7, California

Guttard Chocolate Co.
10 Guttard Road
Berkeley, California

Haas Bros.
1100 - 69th Street
Emeryville, California
2100 Army Street
San Francisco 10, California

Hassett Warehouse Co.
60 Beach Street
San Francisco 3, California
2901 Mariposa Street
San Francisco 10, California
Pier 16-17
San Francisco 7, California
1501 Denison Street
Oakland, California

Hassett Port Warehouse
Stone Blvd. and Gehman Street
Sacramento, California

Hassett Levee Warehouse
Rice Mill Road, approximately 500 feet
southwest end Tower Bridge
Sacramento, California
310 W. Scotts Avenue
Stockton, California

45

McKesson & Robbins, Inc.
(Drug Division)
271 Wallis Way
South San Francisco, California
(Drug Division)
831 Castro Street
Oakland, California
(Liquor Division)
220 Alameda Street
San Francisco 2, California
(Liquor Division)
1000 Besscher Street
San Leandro, California

Murray B. Marsh Co., Inc.
1601 Powell Street
Emeryville, California

Merchants Ice & Cold Storage Co.
Lombard and Battery Streets
San Francisco 11, California

Michelin Tire Corp.
120 Park Lane
Brisbane, California

Minnesota Mining & Manufacturing Co.
220 Shaw Road
South San Francisco, California
(Insulated Wires, Inc.)
210 Shaw Road
South San Francisco, California

Moore Manufacturing, Inc.
Division of Quaker Pacific Rubber Co.
305 Potrero
San Francisco 10, California

Morgan & Sampson, Inc.
50 Berry Street
San Francisco 7, California

A. U. Morse & Co.
53 Page Street
San Francisco 2, California

National Ice & Cold Storage Co.
Battery and Union Streets
San Francisco 11, California
Kansas and Division Streets
San Francisco, California
134 Market Street
Oakland, California

Northern California Hardware & Steel Co.
209 Mississippi Street
San Francisco 7, California

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Nashua Wholesale Hardware Co.
251 Folsom Street
San Francisco 7, California

Pacific Coast Paper Co.
1111 - 11th Street
San Francisco 7, California

Pacific Vegetable Oil Corp.
62 Townsend Street
San Francisco 7, California

1145 South 14th Street
Richmond, California

Pelican Paper Co.
147 Valley Street
San Francisco 11, California

Pioneer Soda Co.
1511 - 15th Street
San Francisco 7, California

Rathjen Bros. of California
2200 - 14th Street
San Francisco 11, California

1111 - 11th Street
Oakland, California

Revell Drug Co.
204 - 14th Street
San Francisco 7, California

Richmond Wholesale Grocery Co.
125 Duane Street
Oakland, California

John A. Roebuck's Sons Corp.
210 - 14th Street
San Francisco 7, California

William M. Rosen, Inc.
1400 - 14th Street
Oakland, California

S & K Sales Company
147 Bryant Street
San Francisco 7, California

S & W Fine Foods, Inc.
200 - 14th Street
San Francisco 7, California

1400 - 14th Street
Oakland, California

Sassone Bros., Inc.
19 - 14th Street
San Francisco 7, California

Safeway Stores, Inc.
Coffee Division
1901 - 14th Street
San Francisco 7, California

48

Textile Service Corp.
1725 - 14th Street
Burlingame, California

Tiedemann & McMorran, Inc.
65 - 14th Street
San Francisco 7, California

22nd and Q Street
Sacramento, California

Union Paper Co.
222 Fourth Street
Oakland, California

United Grocers, Ltd.
605 Sixth Street
San Francisco 7, California

425 - 14th Street
Oakland, California

2001 West 14th
Stockton, California

U. S. Rubber Co.
605 Third Street
San Francisco 7, California

Hiram Walker & Sons, Inc.
1400 - 14th Street
San Francisco 7, California

47

San Francisco Grocery Co.
315 Williams Avenue
San Francisco 21, California

San Francisco Warehouse Co.
605 Third Street
San Francisco 7, California

180 Napoleon Street
San Francisco 21, California

Schwabacher-Frey Co.
100 Market Street
San Francisco 3, California

737 Howard Street
San Francisco 3, California

Scott & Gilbert Co.
200 Mission Street
San Francisco 3, California

Sea Wall Warehouses
1001 - 14th Street
San Francisco 11, California

Seiberling Rubber Co.
200 - 14th Street
San Francisco 7, California

Sharon-Mercury, Division of
Western Tablet & Stationery Corp.
1212 Kifer Road
Sunnyvale, California

Shedd-Bartush Foods, Inc.
200 - 14th Street
Berkeley, California

Sherry's Liquor Stores
316 Bryant
San Francisco 7, California

Louis T. Snow & Co.
200 Second Street
San Francisco 7, California

State Terminal Co., Ltd.
125 King Street
San Francisco 7, California

Stauffer Chemical Co.
Daychord 12th, south of Geneva Ave.
Brisbane, California

Edmund Taylor & Sons
748 Mission Street
San Francisco 3, California

H. E. Teller Co.
51 Wabburn Street
San Francisco 3, California

Walsh Drayage & Warehouse Co.
616 Folsom Street
San Francisco 7, California

22nd and H Street
San Francisco, California

D. N. & E. Walter & Co.
262 Mission Street
San Francisco 3, California

West Chemical Products, Inc.
1100 - 14th Street
Emeryville, California

F. W. Woolworth
1825 Folsom Street
San Francisco 7, California

Zellerbach Paper Co.
215 - 14th Street
South San Francisco, California

1311 - 13th Street
Emeryville, California

2325 So. Airport Way
Stockton, California

1100 Richards Boulevard
Sacramento, California

[UNION'S EXHIBIT 21]

CO.E:
ST - Night Time
OT - Out Time
DT - Double Time

PIERCE - MILLWRIGHT - TRUCK SHOP
HOURS - WORKED

PIERCE - TRUCK SHOP			MILLWRIGHT - TRUCK SHOP		
ST	OT	DT	ST	OT	DT
32	6		173 1/2	40	
32			112	8	
20			4		
32	3		160		
40	8		144	40	
			46		
40			192		
80	18		152	32	
			80		
40			160		
72	14		154	32	
			20		
40			158 1/2		
80	10	8	144	36	
			96		
40			160		
72	9		163	43	
			72		
40			160	1	
48	1 1/2		170 1/2	2	
			60 1/2	2	
40			160	43	
78	12 1/2		144		
			72		
40			160		
80			110 1/2		
			40		
40			160		
80	7		72	4	
			40	7	
- 40			154		
72	3		92	3	
			32		
40			140		
78	16		108	18	
			16		
40			158 1/2		
80	9 1/2		152	11	
				10	

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CODE:

ST - Slight Time

OT - Overtime

ST - Double Time

PILGRIM - MILLWRIGHTS - TRUCK SHOP

HOURS WORKED

17.4
17.4

3-24-50 Insulations
Main Plant
Truck Shop

3-24-50 Insulations
Main Plant
Truck Shop

4-7-50 Insulations
Main Plant
Truck Shop

4-14-50 Insulations
Main Plant
Truck Shop

4-21-50 Insulations
Main Plant
Truck Shop

4-28-50 Insulations
Main Plant
Truck Shop

5-5-50 Insulations
Main Plant
Truck Shop

5-12-50 Insulations
Main Plant
Truck Shop

5-19-50 Insulations
Main Plant
Truck Shop

5-26-50 Insulations
Main Plant
Truck Shop

6-2-50 Insulations
Main Plant
Truck Shop

6-9-50 Insulations
Main Plant
Truck Shop

6-16-50 Insulations
Main Plant
Truck Shop

MILLWRIGHTS - TRUCK SHOP		
ST	OT	ST
40	2	
80		
110	16	
70	2	
40		
80	10	5
40		
79		
40		
80	10	
40		
80	1	
40		
80	16	16
40		
80	16	
40	1	
80	20	
40		
80	2	
37		
72	16	8
40		
56		

MILLWRIGHTS - TRUCK SHOP		
ST	OT	ST
171		
156		
194	40	
120	16	
32		
200		
152	16	5
8		
161		
156		
192		
156	12	
200	5	
157	9	
1		
195	7	
160	27	24
192	1	
160	22	
198	1	
199	34	
196	2	
200		
197		
188	14	
197		
190	32	24
195		
272	16	

CODE:

ST - Straight Time

OT - Overtime

DT - Double Time

PIRE - MILLWRIGHTS - TRUCK SHOP

HOURS - WORKED

MILLWRIGHTS - TRUCK SHOP		ST	OT	DT
1964				
6-23 to 6-27	Insulations Main Plant Truck Shop	40 32		
6-30 to 7-6	Insulations Main Plant Truck Shop	32 40	1 11	
7-7 to 7-13	Insulations Main Plant Truck Shop	40 80		
7-14 to 7-20	Insulations Main Plant Truck Shop	40 80	1 8	
7-21 to 7-27	Insulations Main Plant Truck Shop	40 79	8 10	
7-28 to 8-3	Insulations Main Plant Truck Shop	40 80	1	
8-4 to 8-10	Insulations Main Plant Truck Shop	40 72	8 24	
8-11 to 8-17	Insulations Main Plant Truck Shop	37 52	8	
8-18 to 8-24	Insulations Main Plant Truck Shop	40 40		
8-25 to 8-31	Insulations Main Plant Truck Shop	32 40		
9-1 to 9-7	Insulations Main Plant Truck Shop	32 32	12	8
9-8 to 9-14	Insulations Main Plant Truck Shop	40 40	2	8
9-15 to 9-21	Insulations Main Plant Truck Shop	40 39	1	

MILLWRIGHTS - TRUCK SHOP		ST	OT	DT
1964				
6-23 to 6-27	Insulations Main Plant Truck Shop	142 360	1 24	
6-30 to 7-6	Insulations Main Plant Truck Shop	128 280	8 82	
7-7 to 7-13	Insulations Main Plant Truck Shop	160 320	2 8	
7-14 to 7-20	Insulations Main Plant Truck Shop	160 328	4 16	
7-21 to 7-27	Insulations Main Plant Truck Shop	168 292	35 10	
7-28 to 8-3	Insulations Main Plant Truck Shop	184 264	1 5	
8-4 to 8-10	Insulations Main Plant Truck Shop	160 220	32 32	
8-11 to 8-17	Insulations Main Plant Truck Shop	160 264	19	
8-18 to 8-24	Insulations Main Plant Truck Shop	153 352	24	
8-25 to 8-31	Insulations Main Plant Truck Shop	168 307	2	
9-1 to 9-7	Insulations Main Plant Truck Shop	128 256	27	17
9-8 to 9-14	Insulations Main Plant Truck Shop	160 283	62	24
9-15 to 9-21	Insulations Main Plant Truck Shop	200 269	21	

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CODE:

ST - SIGHT TIME

OT - OVR TIME

DT - DIBLE TIME

PIERCE - MILLWRIGHTS - TRUCK SHOP

HOCKS - WORKED

MILLWRIGHTS - TRUCK SHOP		ST	OT	DT	MILLWRIGHTS - TRUCK SHOP		ST	OT	DT
1/4	Insulations	40			1/4	Insulations	172		
9-20/4-27	Main Plant	40	4 1/2	8	9-20/4-27	Main Plant	280	34 1/2	
	Truck Shop					Truck Shop			
7-27/10-5	Insulations	40			7-27/10-5	Insulations	200		
	Main Plant	40	11 1/2	9		Main Plant	278 1/2	41 1/2	36
	Truck Shop					Truck Shop			
10-5/10-12	Insulations	40			10-5/10-12	Insulations	200		
	Main Plant	40				Main Plant	264	28	
	Truck Shop					Truck Shop			
10-13/10-19	Insulations	40			10-13/10-19	Insulations	200		
	Main Plant	40	11 1/2			Main Plant	284	40 1/2	
	Truck Shop					Truck Shop			
10-22/10-26	Insulations	40			10-22/10-26	Insulations	176 1/2	1 1/2	
	Main Plant	40	11 1/2			Main Plant	213	10 1/2	
	Truck Shop					Truck Shop			
10-27/11-2	Insulations	40			10-27/11-2	Insulations	187 1/2	3 1/2	
	Main Plant	40	8 1/2			Main Plant	232	20	6
	Truck Shop					Truck Shop			
11-3/11-9	Insulations	40			11-3/11-9	Insulations	160		
	Main Plant	40				Main Plant	207	1 1/2	
	Truck Shop					Truck Shop			
11-10/11-16	Insulations	40			11-10/11-16	Insulations	160		
	Main Plant	40	9 1/2			Main Plant	224	8 1/2	
	Truck Shop					Truck Shop			
11-17/11-23	Insulations	40			11-17/11-23	Insulations	160		
	Main Plant	40	10 1/2			Main Plant	216	39 1/2	
	Truck Shop					Truck Shop			
11-24/11-30	Insulations	33 1/2			11-24/11-30	Insulations	96		
	Main Plant	32	1 1/2			Main Plant	160	10	
	Truck Shop					Truck Shop			
12-1/12-7	Insulations	40			12-1/12-7	Insulations	160		
	Main Plant	40	8 1/2			Main Plant	240	2 1/2	
	Truck Shop					Truck Shop			
12-8/12-14	Insulations	40			12-8/12-14	Insulations	160		
	Main Plant	40	1 1/2			Main Plant	204	32	7
	Truck Shop					Truck Shop			
12-15/12-21	Insulations	40			12-15/12-21	Insulations	136	2 1/2	
	Main Plant	40	1 1/2			Main Plant	240	5 1/2	
	Truck Shop					Truck Shop			

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ST - straight time

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DT - Double Time

PILROSE - MILLWRIGHTS - TRUCK SHOP
HOURS - WORKED

MILWAUKEE - FOREMAN			MILWAUKEE - FOREMAN		
ST	OT	DT	ST	OT	DT
32 32			128 160		
32 32	8		128 160	10 1/2	
40 40	7		160 208	35 1/2	
40 40	8 1/2 2 1/2		160 240	33 1/2 4 1/2	
24 24			95 140	4 1/2	

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[UNION'S EXHIBIT 22]

AGREEMENT

and Plaintiff
Division

THIS AGREEMENT, made and entered into this 10th day of October, 1957, by and between FOREMOST FOOD AND CHEMICAL COMPANY, EL DORADO DIVISION, Oakland, California, hereinafter referred to as the "Employer", and the UNITED STEELWORKERS OF AMERICA, AFL-CIO, on behalf of the EAST BAY UNION OF MACHINISTS LOCAL 1304, hereinafter referred to as the "Union".

SECTION 1. RECOGNITION.

The Union is recognized as the sole collective bargaining agency for all employees covered by this Agreement. Such employees shall be those employed in the classifications set out in Section 3 (Wages) of this Agreement.

SECTION 2. UNION SECURITY

A. Union Membership. Membership in the Union on or after the thirtieth (30th) day following the beginning of employment of employees covered by this Agreement, or the effective date of this Agreement, whichever is the later, shall be required as a condition of employment. Tender of the Union periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining such membership, shall, for the purposes of this Section, be considered membership in the Union.

B. Hiring. When new or additional employees are needed, the Employer shall notify the Union of the number and classifications of employees needed and the Union shall have a reasonable opportunity to refer applicants for the vacancies to be filled.

SECTION 3. WAGES.

A. The following shall be the minimum rates of pay for all employees working in the classifications listed below, such wages to be paid weekly:

		8-1-57	8-1-58
Engineer	\$2.925	\$3.145	\$3.255
Maintenance Machinist	2.71	2.93	3.04
Maintenance Machinist Helper	2.38	2.53	2.64

Any employee transferred to a higher rated job shall receive the higher rate.

B. Cost of Living Adjustment. Cost of living adjustments (up or down) based on the Consumer Price Index of the Bureau of Labor Statistics, U. S. Department of Labor (1947-1949 equals 100), hereafter referred to as the Index, will be made in each wage rate established by this Agreement, in accordance with the following provisions:

1. A cost of living adjustment based on the published Index as of November 15, 1957 shall be made on January 6, 1958. A cost of living adjustment based on the published Index as of May 15, 1958 shall be made on August 4, 1958. A cost of living adjustment based on the published Index as of November 15, 1958 shall be made on January 5, 1959. Should the Index for any November 15 or May 15 not be available by the ~~effective~~ date, the cost of living adjustment shall become effective on the first Monday following publication of the Index.

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[UNION'S EXHIBIT 23]

COMPARISON OF WAGE RATES IN
FIBREBOARD CONTRACT, FOREMOST
CONTRACT, AND BLS OCCUPATIONAL
WAGE SURVEY FOR SAN FRANCISCO-
OAKLAND AREA
JANUARY 1958 and January, 1959

	<u>Average Hourly Earnings, Maintenance Machinist, BLS</u>	<u>Rate in Fibreboard Contract with Unions</u>	<u>Rate in Foremost Contract with Unions</u>
January, 1958	2.86	3.375	2.93
January, 1959	3.02	3.525	3.04

[UNION'S EXHIBIT 26]

Exhibit IDistribution of Men as of July 31, 1959

Main Shop	Felt Mill	Floor Covering	Linoleum	Roofing	Truck Shop
Aiello	Crispino ✓	Hamidy	Beck	Bergstrom (Helper)	Capps
Arca (on leave)	Gronberg	Nash	Cunningham	Cruze	Hichethier (Helper)
Bennett	Reihl		Fontes	Fusare	Jensen
Bradford			Jackson	Hall	
Hicks			Longnecker	Homan	
Jobe (ill)			Price	Schlotterbeck	
Johnson, J.P.			Raineri		
Lippert			Smith		
O'Leary			Stewart (Helper)		
Oswill (Helper)			Wittorff		
Swisher ✓					
Vanderbeck (temporarily in power house)					
Weismiller ✓					
Yoch ✓					
Holmes (ill)					

Insulation	Working Foreman	Engineers	Fireman
Fuller	Griffin	Haueter	Mann
Goranson		Hughes	Olson
Johnson, F.C.		Johnson, E.T.	Van Zoen
Schoenfeld		Lowell	Wall
		Novacek	

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[UNION'S EXHIBIT 27]

Exhibit 2
Number of Jobs

As of July 31, 1959, the establishment was:

	<u>Machinists</u>	<u>Helpers</u>	<u>Engineers</u>	<u>Firemen</u>
Felt Mill	3			
Floor Covering	2			
Linoleum ✓	9	(1)		
Roofing	5	1		
Truck Shop	2	1 2		
Insulation	4			
Main Shop	12 1/	1 5		
Power House			5	6*
	37 1/	4	5	6

* including one working foreman

Reductions in force recognized by the Unions.

10/1/60 (floor covering)	-2			
7/1/61 (Linoleum)	-9			
12/1/61 (Storekeeper)				
3/1/62 (Roofing move to Martinez)	+1			
9/1/60- (Reduction in Main Shop over period)	-5			
Establishment at 9/13/62	22	2	5	6
2/1/64 (Automatic controls in Power house)				-6
Establishment at 1/18/65	22	2	5	0

1/ This is two less jobs than men in the main shop on 7/31/59; the Union accepts that Swisher and Yoch were replacing Holmes and Jobe who were ill.

[UNION'S EXHIBIT 28]

PENSION ENTITLEMENT OF THOSE
EMPLOYEES WHO RETIRED PRIOR TO
JANUARY 18, 1965

When credit is given for continuous service from August 1, 1959 to retirement date, the following employees would have been entitled to the monthly pensions as given, commencing on the date shown:

	<u>Monthly Pension</u>	<u>Commencing</u>
F. Bennett	\$ 107.67	Jan. 1, 1961
A. Bergstrom ^{/1}	85.15	Jan. 1, 1961
D. F. Capps	78.27	Jan. 1, 1961
M. Crispino	176.09	Jan. 1, 1961
N. Fuller	65.94	June 1, 1961
D. A. Gronberg	101.79	Jan. 1, 1961
R. Haridy	126.28	Jan. 1, 1961
A. F. Holmes	80.39	Jan. 1, 1961
R. E. Hughes	140.11	Oct. 1, 1961
J. P. Johnson	156.94	Jan. 1, 1963
L. J. Nash	130.67	Mar. 1, 1964
S. J. Smith	107.57	Nov. 1, 1959
D. C. Wittorff	101.82	Mar. 1, 1963

^{/1} Although Bergstrom's job was eliminated as of 12/1/61, his pension would have vested, and at compulsory retirement age, Jan. 1, 1963, he would have been able to retire with the pension as given.

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